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No. 1738

UNITED STATES OF AMERICA
 IN THE
 United States Circuit Court of Appeals
 FOR THE NINTH CIRCUIT.

FRED J. BLISS,

Appellant,

VS.

WASHOE COPPER COMPANY, and
 ANACONDA COPPER MINING COMPANY.

Appellees.

Brief and Argument for Appellant

VOL. V

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Grain Conditions	1783 to 1804

C. M. SAWYER,

R. L. CLINTON,

Solicitors for Complainant and Appellant.

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Court of Appeals

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Appellant's Brief.

ABSTRACT OF TESTIMONY SEPARATED FROM
THE BRIEF AS TO CONDITIONS EXISTING ON
THE BLISS RANCH AND IMMEDIATE VICINITY
ALSO CROP CONDITIONS EXISTING IN DEER
LODGE VALLEY.

DEFENDANTS' claim COMPLAINANT did not try to
present case fairly :

(NOTE—The following testimony shows this is not
a fact.)

See STATON'S testimony where *he was refused a sam-
ple of Callan's horse by A. J. Shores and J. A. Dunlap,*
also where he offered to give to Dr. Doremus, Defts. Wit.,

any cattle he might want for slaughter for chemical analysis; also invitation to Doctor Gardiner, Defts. Wit., to be present at autopsy; also of giving to the Company an animal for slaughter; offered Doctor Gardiner stock for autopsy purposes,—told him to go into his herd and kill any he chose to without cost to him or his Company,—page 6389, V. 17. Dr. Gardiner, Defts. Wit., refused to meet Dr. Knowles, Comp. Wit., and Dr. Cheney, Comp. Wit., at joint autopsy on Staton's ranch, after agreeing to do so.

There is no place in this record where the Defendants were refused samples of vegetation from the ranches. The Court can readily see by the statements of Blankinship, Defts. Wit.,—Traphagen, Defts. Wit.—Ralph Smith, Defts. Wit.—Dr. Gardiner, Defts. Wit.—and Dr. McEachran, Defts. Wit., as to their frequent visits to the farms,—and only one man kept them from his ranch in the entire period of two years, while the investigations were being carried on. *While the defendants would only admit plaintiff to the Smelter to take samples after the Court had ruled that the plaintiff was entitled to sample the smoke stack, and while the complainant was at work the defendants detailed a man to remain with them constantly, and, after that time, access to the Smelter was refused complainant by defendants, whereupon the complainant notified the defendants to keep away from the ranches,—unless they would allow plaintiff access to Smelter again,—then a stipulation was filed in Court, signed by both parties to this action, that either party could have access to the properties of the other party by being accompanied by an expert of the party on whose property the investiga-*

tion was being carried on. *Although the experts for the complainant were not then in Montana, they were sent for and came to Montana, to-wit: Doctor Swain and Professor Jones, for the express and only purpose to accompany the defendants' experts in an investigation of the Valley. The chemists for the defendants did not show up and Dr. Swain's trip was useless.*

A total of about three days of investigation, in company with Professor Jones, on the botanical line, was all the time consumed,—but, for a period of over twelve months prior to the filing of this stipulation the defendants were allowed free access to all the farms and stock in the Deer Lodge Valley and came and went at will through the Valley and upon the farms of the Deer Lodge Valley Farmers' Association, and were allowed to examine any and all live stock on these farms.

Doctor Pearson, Defts. Wit., was given an invitation to visit the farms and stock with complainant,—but, he did not do so until *after* he had testified on DIRECT for the DEFENSE; and Dr. Pearson was the only one of defendants' veterinarians who did so,—and the Defendants, principal veterinary who testified on DIRECT but was not here on SURREBTUTAL.

The Court will see in Doctor Formad's Comp. Wit., testimony where the attorneys for the defense claimed Dr. Formad should not have testified to the condition of the Bliss steer slaughtered on Section 16, as it was only given to him for a report to the Government, and what he found there should have been kept secret. Does the Court believe that the Government sends men to investigate farm and stock conditions to be kept secret?

The above criticism of Doctor Formad clearly shows it is not the complainant who is trying to cover up facts and prevent a full statement of the same, *but the defendants*,

Defendants were allowed upon the farms for months, making surveys of the ranches of the Farmers' Association and were never kept from any part of the Bliss ranch, but in fact were allowed to, and did use one-half of the Bliss ranch for experimental purposes, and at no time was a member of the Farmers' Association in possession of the Bliss ranch; but it was leased to one Wolfe and to the defendants herein, clearly showing that the Farmers' were willing and anxious for a full and free investigation of the conditions of the Deer Lodge Valley.

DEFENDANTS' BRIEF:

Doctor Doremus, Defts. Wit., states the reason he refused to proceed with the autopsy of the Callan horse was that he was acting as *an agent*, and waited for the return of Mr. Dunlap and A. J. Shores and they refused to let Mr. Staton and Mr. Callan witness the autopsy or take a check sample. These animals were burned up. (V. 40, 15883.)

Q. "Did you not order Mr. Dennis Callan not to allow anyone to take a sample of the animal? (V. 40, 15883.)

A. "If I did, I told him that Mr. Dunlap had so given instructions. I was merely acting as an agent all through this matter." (V. 40, 15884.)

Stats it was not for him to accept or decline offers of stock for investigation,—“It was for the company to indicate what they wished me to do.” (V. 40, 15885.)

The above statement clearly shows that the witness for the defendants were told *where to go and what to do, and*

were limited in their investigation by the company,—and this man Doremus, the only toxicologist for the defense, was only allowed to or did analyze tissue from seven animals, in which he found arsenic in all of the tests made.

Dr. Doremus, Defts. Wit., will not deny the fact that Dr. Cheney, Comp. Wit., (and while Dr. Cheney was in the employ of the defendants) suggested joint autopsies so as to arrive at the facts. (V. 40, 15888.)

Defendants make statements which are not true in any manner, not supported by the Record, in regard to proselyting among the farmers by the Chief Spirits behind the organization of the Farmers' Association,—and particularly allude to Professor Jones and Dr. Cheney.

A. J. Shores, President of the Washoe Copper Company, stated to W. C. Staton in his office, that the Farmers had proceeded exactly as he wished them to proceed, and we had done right, as the forming of an association and presenting of our claims for damages and prices on the farms of the Deer Lodge Valley. (V. 16, 6103.)

On page 6089, V. 16, Staton's testimony shows no person was ever asked to join the Farmer's Association by an Officer of the Farmers' Association. They had to come voluntarily and it is undisputed in the testimony.

Staton further says that they *refused members to their association at the request of A. J. Shores* (attorney for the defendants and President of the Washoe Copper Co.)

The Court can readily see that this charge of misleading and deceiving the farmers of the Deer Lodge Valley is entirely untrue in regard to getting them to join the Association,—The Association was formed and the claims of 107 members submitted to the Company *for consideration*

(*at their request*,—page 7114, V. 18,—see list of the 107 members whose claims were presented to the defendants) about the 7th of February, 1905,—see page 6003, V. 16,—Plaintiff's Exhibit number 41. The Farmers' Association in February of 1905 consisted of 107 members, and—*as at that time numbers were turned away at the request of the defendants*,—how absurd the statements and how false they are *as to any prosleyting or mis-statements being made by Dr. Cheney and Professor Jones, Comp, Wit., in order to get members to join the Association*. Dr. Cheney continued in the employ of the defendants until October 1, 1905. Professor Jones did not arrive in the Deer Lodge Valley until *July 19, 1905, or four and a half months after the claims were presented to A. J. Shores, President of the Washoe Copper Company, so the Court can readily see the defendants are not stating facts*. There is not one instance in this record where either Dr. Cheney or Professor Jones ever advised or asked a man to join the Farmers' Association,—and as regards any statements made as to damage done by smelter fumes, they are entirely substantiated by this record.

On page 2088, V. 6, Doctor Cheney states that while in the employ of the defendants he stated *to Mr. Mathewson and Mr. J. A. Dunlap that the live stock in the Deer Lodge Valley were suffering from arsenical poisoning and Smoke Fume Poisoning from the Washoe Smelter*. Page 2088-9, V. 6, states was called to make professional calls for defendants after his discharge, and refused to go. It will be seen by the record that Dr. Cheney continued in the employ of the defendant companies until October 1, 1905,

—or eight months after claims were presented to defendants for settlement.

Defendants' allude to complainant trying to limit them as to time. *The complainant put in his side of the case in the time set by the Court, or ninety days, and rested,—and asked that time for the defendants to proceed with their side of the case, to which the defendants themselves objected on the grounds that their Experts were no available,—and the Court suggested that the defendants proceed with the lay testimony,—and they stated to the MASTER that they could put in their lay testimony in a few days, and they then would have to ask for an adjournment. What was the actual facts as to time? They consumed about sixty days with their lay witnesses, holding court about five hours a day and six days a week,—before they ever put an Expert on the stand.*

We now call the Court's particular attention to the affidavits of defendants counsel: "In the Circuit Court of the United States, Ninth Circuit, District of Montana. Page 88 to 96.

Further criticise the affidavits of the farmers that many would have to leave their homes, and come into court and says that they have not done so,—and say it is not in the record they did so. These affidavits were filed long after the plaintiffs closed their case in chief and any evidence as to the abandonment of *farms could not be introduced*, but the facts are that a number have left their homes, to-wit: (Had it not been for the United States Government assisting at this time the case would most probably have gone by Default on account of the immense cost.)

E. J. Evans, H. D. Mason, W. H. Staffanson, Hiram

Staffanson, Eph Staffanson, Mrs. E. A. Staffanson, J. S. Boone. Wm. H. Allen, Jeff Levengood, Cal Levengood, Jos. Jolley, Gregor Schwend, Claud Schwend and brother, C. Gyrard and Wm. Stevens, who have actually removed from the Deer Lodge Valley, and there are a number of farms on which farming has ceased, to-wit: Showers ranch; Gibbs ranch (Estate); Mullen ranch; Murphy ranch.

The court will doubtless remember that on the first request to visit the Deer Lodge Valley, the plaintiff *objected to the visit at that time unless the Court would, at a later date, visit it when the conditions were more favorable to the farmers as regards the sickness of the stock and that a request was made by the complainant that the Court visit the Valley later in the same year,—which the Court refused,*—then the defendants' again requested the Court to visit the Valley and the Deer Lodge County Fair,—which was refused by the Court. The plaintiff believed and does now believe that it was a reasonable request that th Court should have visited the Valley in Fall and Winter season when the live stock were most affected. The defendants claim that the farmers testified to losses as great or greater in the summer months than any other time and quote (5978-9, V. 16, page transcript) that Staton's biggest losses, who reports the largest loss on the Record, began in June, 1905. On page 5978, V. 16, Staton testifies his cattle began to sicken in June of 1904, not to die at that time. See record to page 6012, V. 16, to thoroughly explain this.

It was in October, 1904, before any of my stock *died*, but some were sick before that. On page 5979, V. 15, Sta-

ton states lost 51 head of cattle between October 20, 1904, and October 25, 1906. On page 6357, V. 16, states horses died between January, 1905, and present time, (March 28, 1906.) On page 6075, V. 16, *I lost 13 horses of my own by smoke and three from other causes, since October, 1904.* The Court can readily see by the above testimony that Defendant's statement as to *Staton's losses being between June and October are not true*, but Staton gives his losses as between October, 1904, and October, 1905. Also states on page 6012, V. 16, that the first death was in October, 1904, although you will see his testimony shows (on page 5995, V. 16,) as follows: From October, 1903, to June, 1904, my stock never did better, showing no trouble to stock until June of 1904 *and the first death after the building of the new stack was in October of 1904 and not, as Defendants would have the Court believe, between June of 1905 and October, 1905, or during the time of the Court's visit, to the Deer Lodge Valley.* By examining the testimony of Kreider and Staton as to the *time* of the year of their losses the court will see the statement of Deft, Attorneys are not the facts. The following pages gives the testimony of Staton and Kreider as to the season of the year when their losses occurred.

FRANK KREIDER'S EVIDENCE, Comp. Wit. :

I lost 12 head in 1904. (V. 10, 3866.)

Kreider's loss in 1905 dates as follows: January 2, cow; 10th, cow; 24th, cow; 25th, yearling; February 7th, cow; 10th, calf; 24th, large calf; March 1st, calf died two years old; April 10th, fine cow; July 21st, cow died; Sept. 1st, cow died; Sept. 1st, calf; February 5th, 1906, lost cow,

and calf was born dead on the sixth. (V. 10, 3866.)

I did not lose any cattle while the smelter stopped in 1903. (V. 10, 2868.)

My stock is worse in March and April. (V. 10, 3868.)

In 1903, date of death of stock, February 11th, 16th, 19th, 20th. Does this bear out the facts as set out in Defendants' Brief as to the condition being at the worst during the time which the Court made its visit to the Deer Lodge Valley? All the testimony in this Record shows the stock to be in the worst condition in the fall, or from September to April. We have taken the only two casts they have cited to prove their contention, and show them to be untrue. Also find sheets attached of analysis of grasses, showing the increase in the amount of Arsenic on the grasses the longer they are exposed, and this increase is clearly shown by these analysis, up to the time new grass again began to grow. (V. 10, 3883.)

Defendants' make the statement that "If no injury between June and September, there can be no injury to stock."

The Record is full of injury caused by the smoke to crops all during the growing season of from June to September; the bleaching of the crops, which is sulphur damage, and shows more plainly on the growing crop, while the arsenic damage, or the actual poisoning of the crop, increases all during the season and much more rapidly during the fall and Winter months, as shown by the sickness and death of stock as confirmed by the analysis of the grasses. See chemistry brief.

Defendants admit damage to live stock in 1902 and 1903

up to the time of the remodeling and the building of the big stack.

What do all the witnesses for the Plaintiff say? They say *this sickness is the same as the sickness before the building of the big stack.* Dr. Knowles, Comp. Wit., states on page 2108-12-13, V. 16, the sickness at this time is the same, and from the same cause as in 1902.

Dr. Faunt, Comp. Wit., same trouble, same as in 1902, only more general and more widely affected. Dr. Knowles and Dr. Faunt, Comp. Wit., were the *only two veterinarians who testified, that examined conditions in 1902.* The Farmer witnesses who testified to these facts are too numerous to mention, but will give a few: N. J. Bielenberg, Frank Kreider, W. C. Staton, K. D. Smith, Angus Smith, Bart Para, W. P. Roberts. In fact almost every stock raiser on the stand stated the symptoms were the same, and *the Defendants have failed to put on one witness who was familiar with conditions in both years who says the symptoms of the live stock were not the same.* Dr. Knowles and Dr. Faunt's testimony stand undisputed in this record in that respect, and as shown by record, Dr. Knowles was employed by the Defendant Company to inspect and pay for the dead and damaged stock in 1902 and spring of 1903. If Dr. Knowles was competent then, he must so be considered now.

Defendants claim no damage was asked for loss of crop in 1902 or depreciation in yield *and none was paid.*

See what the Record shows on page 6372, V. 17, Staton's *itemized claim for damage to shortage in crops for year of 1902.* 6320, V. 16, company paid me \$150.00 *damage to thirty acres of grain in 1902.* 6313, V. 16, see Staton's Re-

lease for damages; *shows they paid for damage to vegetables in 1902.* 6010, V. 16. *states Company paid damage to his garden in 1902.*

This itemized claim for damages presented by W. C. Staton for 1902 *in the only copy of any of the claims as presented to the company in 1902.* This shows claims for damages as to loss of crop and depreciation of yield, and Staton's testimony, as cited above, shows they paid it, also the form of his release to them; to-wit:—where it specifies “All Damage to *Crops* including *Hay, grass, pasture, vegetables, etc.*”

W. H. Allen, release for damages for 1902; paid this man \$2,000, whose principal business was a gardener; *cut had remedied the evil. That is all we ever heard of Mr. only a limited amount of hay; about fifty tons at the most, who only had ten head of stock.* Does the Court believe he *did not ask and was paid for depreciation in crops when his release, in this respect, reads as follows: “All damage to my crops, including hay, grass, pasturage, vegetables, etc.”*

The Court will further notice that these releases state: “Itemized in a list presented,” but the Staton itemized bill for damages was the only one they introduced, and it shows exactly the opposite of what defendants state in their Brief. *The Court will find in all of the releases for damage paid by the defendants for 1902 the release on the crops and vegetables. Is “Crops” only poisoned hay and pasturage? (as the defendants would have your Honors believe); is not everything that is cultivated on a farm included in the word “Crops,” to-wit: hay, grain, grasses and vegetables of every description? Still they try to dodge their own*

evidence and make this Court believe that "*Crops*" means only poisoned hay, grass and pasturage.

Defendant's attorneys refer to the great and extensive scientific investigations in regard to overcoming the smoke evil (as it existed in 1902).

The defendants admit damage to stock, hay and pasturage in 1902 in numerous pages in this record; also ask for a finding, stating the fact they paid over \$300,000 in damage for the year of 1902. But they have failed to show that *they were emitting any less sulphur, arsenic or other substances into the air from their smelter than in 1902*. On the other hand, the testimony of Mr. E. P. Mathewson shows *increased reduction of ores*. No claim has ever been made that they had *stopped the emission of any of the sulphur*, and the testimony of Mathewson shows that *only a small amount of the flue dust is refined in their arsenic plant*; that they save not to exceed one ton of arsenic in 24 hours, while there is emitted from the stack at least 25 tons every 24 hours. The defendants having had all the facilities at their command, the smelter, men and money unlimited, have not now attempted to show to this Court the fact that they had stopped the emission of these poisonous substances from their works, *but do show an increased reduction of ore of almost double the amount reduced in 1902*; and as they are not saving any of the sulphur, the sulphur emitted at this time must be increased over that of 1902, at the same ratio.

As to the arsenic, they saved none in 1902 and only about one ton a day at present, while 25 tons escape into the atmosphere. Does it not also stand to reason that the *emission of arsenic has been increased as well as the sulphur?*

Mr. Kelley stated to the Court that they would show by *Mr. Park Canning of the Tennessee Copper Company, which Company has a similar stack and flues, that they Channing from Mr. Kelley, but we did hear from the results, as an injunction was granted against that plant by the United States Supreme Court. No matter how much money or time the defendants spent in investigation, the fact remains that the high stack and flue has not done away with the damage.*

Notwithstanding the above facts, after admitting and paying for damages done in 1902, they come into this Court stating *almost double the amount of ores treated, with no showing of having stopped any of the sulphur, and only an infinitesimal amount of the arsenic, and ask this Court to find no damage, on the grounds of the height at which it is discharged into the air. They do not state to the Court that less than one-half miles southwest of their smelter, also in the west, at about the same distance, the hills are much higher than their stack and the winds coming over these hills blow down on the top of this stack, and force the fumes to the ground, Mr. Mathewson's testimony shows that frequently the smoke stream hits the Valley at about two miles from the stack, and as the gases from the stack are much heavier, two and a half times as heavy as air, they must fall and settle on the surrounding country. And the result of the high stack must be to spread the injury and to minimize the damage close to the works and increase it at a distance.*

Defendants further state that in many instances they *paid damages to more than the value of the farms. There is no evidence in this record to that effect, and is not true,*

and we challenge the defense to show any such facts.

Still we admit, and the Court can readily see that it is possible, *to do more damage to a farmer, to his crops and live stock in one year than the actual value of the land itself*, as the live stock kept on a farm, especially in the west, where we have free range, in many instances exceeds the value of the farm itself, and this most undoubtedly occurred in the Deer Lodge Valley, and we call the Court's attention to another clause in their release where they took a final release *for all future damage to any live stock*, from future as well as past injury, and the future developments showed where they were *wise*, for many of the stock on which damage was paid and which partially recovered have since died from the smoke poisoning of 1904, 1905, 1906.

The defendants claim they paid no damage on anything but stock, hay, grass and pasturage. If they paid no damage to *crops* and no damage to the *land*, do they expect a court to believe that their company was *foolish enough to pay more in damages than the value of the animals, more for the hay than it would sell for, and more for the damage to pasture than it was worth?* To ask an intelligent court to believe any such statement is folly. And we have the value of the *crops*, which would mean in this case *grain, vegetables* and root crops, and the value of the farms, which was not considered or taken into consideration in these settlements. Take the amount they paid out \$300,000, for the entire Deer Lodge Valley to five miles north of Deer Lodge, which they state contains 240 farmers owning from 160 acres to many thousands of acres each, and who owned from *a few head of stock to hundreds of head each*, and who cut thousands of tons of hay; divide \$300,-

000 by 240, the number of farmers they settled with at that time, what have we as an average? \$1,250 for the farms of the Deer Lodge Valley. That amount is less than the houses and fences of the Deer Lodge Valley cost per average farmer. And another fact must be taken into consideration here in this, that much of the money was paid to men for loss of live stock who owned no lands in the Valley. Bielenberg testifies the lands of this Valley are worth \$25 an acre; Staton testifies to the same; Crosswhite from \$2.50 to \$35 per acre. Where did the profit come to the farmers by being damaged in 1902? In no case did they show where a man received *more than his actual loss, at that time; still they claim great liberality where they only gave partial justice at that time.*

They try to show that this Association was formed for the sole purpose of bringing suits against the defendants. What does it show? First meeting held December, 1904 (Transcript 6086-88, Vol. 16); first experts on the ground in January, 1905 (Transcript 2112, Vol. 6). These experts were Dr. Knowles, Dr. Schwartkopf, Dr. Gresswell. Dr. Knowles, State Veterinarian, and the man whom the Company selected to investigate and pay for stock killed in 1902, and who was familiar with smelter poisoning, not only in the Deer Lodge Valley, but also at Great Falls, where the same class of ores are treated. And the Court well knows that veterinarians diagnose a trouble without the assistance of chemists. Transcript, page 4854, Vol. 13, shows Dr. Harkins, Comp. Wit., was on the ground and took samples on January 12, 1905. Defendants' counsel states plaintiff made a demand on the Company on January 30, 1905, which is true, but states that "of course

made no analysis until long after." See what Mr. Bielenberg, Comp. Wit., testifies to on page 4470, Vol. 12: "*After we got our reports from the veterinarians and chemist we wrote to the Smelting Company a letter, a copy of which I have here. Produces letter.*" Whose statement is to be taken here, Mr. Bielenberg's, who *testifies positively that reports were received from the veterinarians and chemist prior to any claim being made, or Mr. Kelley's bare statement of what he might think might possibly be true.* Mr. Kelley does not allude to a later letter of March 4th, 1905, and presented with one hundred and seven claims of the farmers to his company (page 4493, Vol. 12), but tries to convince the Court that the farmers *were arbitrary and wished to injure them without giving them a chance to settle the trouble,* when this record shows it *was months after an offer of arbitration was made by the farmers* (see letter of January 30, 1905, and marked as an Exhibit. 41) *before this suit was filed.* There is *no place in this record where any offer was ever made to the farmers to settle the damage, but, to the contrary, defendants deny all damage.*

See Jacobson's affidavit, where he states Mr. Dunlap stated to him that "(the company) will fight the farmres until they have not money enough to buy a breakfast," and this affidavit is undisputed. Mr. Dunlap is purchasing agent for companies, and an admitted agent of the Company by the attorneys in this case.

It is true that Professor Elrod and Professor Jones, the botanists, did not appear until May of 1905, but a *farmer knows when injury is done to his crops and the extent of the injury better than any botanist.* The farmers knew their crops were injured in 1904, a year before Elrod and

Jones made investigations, while it was probably necessary from a scientific standpoint to have botanists explain how the injury was caused. The record is full of statements similar to this (by the farmers of the Deer Lodge Valley) :
“I would see the smoke come over my ranch and after it had went away (length of time varying) I would notice the oats white, the alfalfa white spotted and the grass burnt and withered.”

See digest on Sulphur for exact statements and by whom made.

They quote a pretended conversation between Kreider, Elrod and Jones. Record shows as follows (V. 10, 3908) :

“A. Well, it looked good and it yielded good too, but the fellows that were examining my grain, they said the wheat was falling, from the smoke.

A. Well, I could see myself, the leaves on the stalk were wilted.

Q. Who was this fellow that told you that?

A. Well, some fellow that came there to examine my place; I never asked for their names.

Q. An expert?

A. An expert, just like you are in law.

Q. No, I am not. Was he an elderly gentleman?

A. No, he was not. No, a man about your (Mr. Kelley's) age, younger than you.”

Again the defendants' stretch their imagination and try and infer to the Court that these experts were Jones and Elrod. Mr. Kreider don't know their names, but knows the appearance of the man who made the statement about the grain being injured by smoke, which was no doubt true.

Mr. Kreider says it was a man *younger than Mr. Kelley*. The Court will doubtless remember Professor Jones as an elderly man with gray whiskers (Transcript, page 6024, Vol. 16), who gives his age as fifty-three years. With Professor Elrod the Court is doubtless acquainted, an older man than Mr. Kelley, while Mr. Kreider states he was younger than Mr. Kelley.

The defendants' attorneys again try to mislead the Court and state it was Cheney, Faunt and Kreider's conversation. See what Kreider again says (Transcript 3880, Vol. 10) : Did not know their names, but says one of them was an *old Dutchman*. (Transcript 3881, Vol. 10.) At the time of this visit the record shows Dr. Schwartzkopf and Dr. Chas. Gresswell were in the Valley making an investigation for the farmers. (The testimony shows that Dr. Gresswell died in Denver, Colorado, and Dr. Schwartzkopf was in the Philippine Islands when this suit started.) Again we see they are jumping at conclusions, giving names where none were given, and the description of neither Faunt nor Cheney would fit the description of an old Dutchman, while Dr. Schwartzkopf was an elderly German veterinarian.

Defendants' quote now the Griffith-Jones conversation (Record, pages 3380-1, Vol. 9) : Doubtless Professor Jones told him the smoke had been there. Mr. Griffith states (3381, Vol. 9) he knew the stuff was damaged, but did not know how the smoke affected it.

Record, 3381, Vol. 9 :

"A. I noticed it on the alfalfa, that the leaves turned a little white; they said it was smoke, but I don't know.

Q. You don't know?

Oh, no, I will tell you that Mr. McCleary, Deft.'s Wit.,

and Mr. Thomas, Deft.'s Wit., came down to go through my field and look at my stuff, and *they said the smoke had been there.*"

(NOTE.—Mr. McCleary and Mr. Thomas, as the record shows, have been in the employ of the Company—Mr. McCleary since 1902 and Mr. Thomas since the Spring of 1903—so here we have confirmation of Professor Jones' statement by the defendants' own employees. *No mistake, no guesswork. Mr. Griffith gives the names.*)

Record, 3383, Vol. 9 :

"A. I think it was a white spot, or looked like a white spot, something of that kind ; I don't know as it went clean through.

Q. Was there anything peculiar in the vegetation around your place that Mr. Jones did not ascribe as having been caused by smoke?

A. He did not say anything particularly. He is a man of very few words ; he was a stranger to me ; I could not understand him. I had never seen him before and I did not know in whose interest he came there when he first came ; he seemed to be a very clever gentleman though, and what remarks he made certainly were very sensible. I thought ; they seemed to be very sensible and pointed."

MR. CLINTON (3358, Vol. 9) : I will change the question :

"Q. When the smoke would come down there, when you have noticed it on the place, would you notice any particular effect at that time upon your garden truck or vegetables?

A. I paid very little attention to the time that the smoke came down ; I paid more attention to my vegetables.

There was something affected them; whether it was that or not I don't know; I presume it was.

Q. Well, what was the effect that you noticed?

A. That they would wither; that is when the vegetables are young; after they would get advanced some, get larger, they did not show so plain; but there was something when the vegetables are young that certainly affects them. (See page 3359, Vol. 9.)

Q. What kind of vegetables do you refer to?

A. Beets, carrots, parsnips, peas and such garden stuff as we can raise."

Parker-Elrod conversation (Transcript 8172-3, Vol. 21). See what Parker says the smoke did when it came and hit his oats:

Record 8168, Vol. 21. By MR. CLINTON:

"Q. Mr. Parker, you said that the smoke came up one day (8169, Vol. 21) this last Summer on your second oat crop, did you, standing?

A. Yes, sir.

Q. About what time was that?

A. That was some time in August.

Q. 1905?

A. Yes, sir.

Q. That is the only time you noticed it affected the hay or oats? That is the only time you noticed it settling down on the oats there, was it?

A. Well, I had noticed it these times settling down on the crops, but it appeared to be times when the grass was dry, and I don't believe the smoke will affect it when it is dry like it will when it is wet. The time it affected those oats it was wet; it had rained and I noticed the leaves

were all turned white, just like you rubbed chalk over them. (S170, Vol. 21.)

A. Yes, sir, generally, and sometimes goes to the north.

Q. Then it is not very often that you have what you call strong smoke or much smoke settle on your place?

A. No, sir.

Q. And that has been true since you have been up there?

A. How is that?

Q. That condition has prevailed since you have been there, I say?

A. Yes, ever since I have been there.

Q. Then you would state in reference to smoke that during the Summer season you have very little smoke at your place?

A. Yes, sir.

Q. Have you observed the smoke during the Summer season in the Deer Lodge Valley out in the Valley proper? (S168, Vol. 21.)

A. I can't see all over the Valley from my place; I can see partly over the Valley, but I can see the stack and see which way it is going.

Q. *Which way does the smoke go?*

A. *It goes down mostly.*

Q. *Right down the Deer Lodge Valley?*

A. *Right down the Deer Lodge Valley.*

Q. *The prevailing winds, you have noticed it taking it down the Deer Lodge Valley and not up your way?*

A. *Yes, sir."*

Morgan-Johnson-Cheney conversation (V. 21, 8172-3) :

Mr. Johnson, since the close of this suit, has taken Mr. Cheney's advice—has sold his dairy and went to work for wages to the men he sold it to. The above is not in the record, but is a *fact*.

Defendants refer to the alleged neglect and starvation of Staton's cattle.

Let us see what the record shows as to the feeding of Staton's cattle and the range they had to run upon. On page 6013, Vol. 16, turned cattle out on May 10, 1905, after being fed all winter. (Page 6014, Vol. 16): They had a range of six miles north and south from two and a half to six miles east and west. This range used to support one thousand head of horses and cattle prior to the erection of the Washoe Smelter, and there was not to exceed two hundred head of horses and cattle on that range this summer (1905), including my own. (Page 6015, Vol. 16): While the grass on the range is not so good as it was before the erection of the smelter, *there is more grass on the range today in proportion to the number of cattle than there has been for several years*. This statement is undisputed. (Page 6327, Vol. 16): Staton gives the owners and amount of stock that used to run on Willow and Mill Creek ranges, total one thousand head.

Page 5978, Vol. 16, shows these cattle were fed winter of 1904 and 1905 three hundred and fifty tons of hay. Fed until May 10th, a week longer than any other cattle were fed in the Valley. Pages 21200-1, Vol. 54, plaintiff offers to prove the actual feeding of this by A. J. Cole, and was not allowed by the Court to be introduced, as the Master stated Staton's testimony shows as to the feeding. Page 3167, Vol. 8, George Parrott states that 1,000 head of stock

used to run on the Willow and Mill creek range.

GEO. PARROTT, Comp. Wit. (Record 3167-8, Vol. 8):

“Q. What do you say about the range during the last five years and during the time that the Washoe works have been running, about its being overfed?”

A. I don't know that it has been overfed, but the range has been destroyed, and I took my cattle away from there altogether, all I could, and put them on the other side of the Valley, over that mountain, to get away from the smoke.

Q. What was the condition of this range at the time you stated this 1,000 head of stock and cattle ran on it as to being overfed?

A. Cattle used to do very well there; the cattle and horses did, of course it was not really as good as it used to be about 20 or 25 years ago.

Q. Well, how far back from Anaconda did you say what is known as this Willow Creek range extends?

A. Oh, it extends south there 10 miles back, if the cattle see fit to go there?

Q. Well, about how far?

The defendants' attorneys again try to misledshrdlwdw French Gulch, and they frequently go over the top of the mountain on to the other side.

Q. And do you know how wide it is?

A. Just as far as they wish to go East and West, there is nothing to stop them.”

Page 3168, Vol. 8:

“Q. I believe you stated you took your cattle away from there of late years?

A. Yes, after they began to die from the smoke I took

them over east of the mountain to get them as far away from it as I could.”

(Page 21172, Vol. 54) J. O. Allen: There were 1,000 head of stock around my place in 1902. (21178, Vol. 54): This 1,000 head ran on Willow and Mill Creek ranges. There has been no fencing of this range since 1902.

(Page 21178, Vol. 54): The range there at present is good, but no stock there that I know of. I keep my stock at French Gulch because I can not keep them in the Deer Lodge Valley.

(Page 21420, Vol. 54): Staton states his fence around Sections 25, 35 and 36 has been down for two years and never was completed, and is open range.

(Page 5851, Vol. 15): There were not to exceed 200 head of cattle and horses on this range this summer, including my own, and they do not do well. (Page 6328, Vol. 16): Twenty acres of average bunch grass land is supposed to feed a steer the year around. Staton's cattle had more acreage than that in proportion of range, besides about 3,000 acres of his own land.

Wm. Evans (Page 3472, Vol. 9): “I take my cattle to French Gulch in the summer because they won't live on these ranges here or in the field.”

The evidence of Allen, Parrott, Staton and Evans shows that Evans' cattle ran on the Willow and Mill Creek range, also Allen's cattle. Both of these men swear they could not keep their cattle on these ranges since the operation of the Washoe Smelter, whereas for many years prior to that time they ran there and did well (Page 3473, Vol. 9), and they were always fat and in fine shape. French Gulch is 22 miles from my ranch, in a southwest direction.

(Page 3476, Vol. 9) : “*I have tried to run stock on this range at the present time. I have tried it; they would get sick and die.*”

Defendants doubtless base their statement on the word of Dr. Gardiner (their witness), who states he saw Staton's cattle wandering around aimlessly in the snow and nothing to eat on the day of the sale, October 19, 1905.

See what the record shows (Page 6397, Vol. 17) :

“Q. What was the condition of your cattle, alluding to October 19, 1905?

A. In poor condition.

Q. Where had they been running?

A. On the Mill Creek and Willow Creek ranges.

Q. In the hay field west of your house?

A. No, sir, upon the lower ranch.

Q. I will ask you if those cattle had not been in that enclosed field right around your house, where there was practically no feed at all for them?

A. Where they were the day of the sale?

Q. Yes, sir.

A. They had not been in there only the night before, and they were fed hay in there and hay lying all through the field.

Q. They had only been there a day?

A. That is all, yes, sir. They were taken out of my field and put in there.”

See what Jesse Miller (a witness for and an employe of defendants) says in regard to the hay lying in the field on that date (Record 2477, Vol. 7) :

“They were in a bunch grass field south of the house and he had *fed them some alfalfa hay.*”

How would he know they were fed at all if hay was not still left lying there?

The record shows that these cattle *had better feed conditions* than cattle received during the period prior to the erection of the Washoe Smelter. *They had the range that used to support one thousand head.* On page 5978, Vol. 16, where these cattle were fed in winter *350 tons of hay, an average of over two tons to the head, cows and calves,* and the testimony of Staton shows that 75 of these were calves. Ralph E. Smith (one of defendants' experts), on page 15931, Vol. 40, *admits the timber directly east of the Parker ranch, on Mill Creek, is being injured by smelter fumes.* (Pages 15006-7, Vol. 38): *States that he examined the timber on Section 25, 35 and 36, T. N., R. 11 West, and this streak I have mentioned goes across there. There is not timber on all of this strip; it is simply a streak of land and whatever trees are there shows the effect. It shows quite plainly on northwest quarter of Section 35. On these sections which I have mentioned I attribute it to smoke. There is very little timber on these sections.*

In the above statements Ralph E. Smith, the defendants' witness, *gives this as the worst injured portion to timber from smelter fumes (the Mill Creek region).* *The sections of lands given above are the lands of W. C. Staton, on which his cattle ran in 1905, and, as is clearly shown in this record, the arsenic and sulphur go together. Is it not much more reasonable to suppose that Staton's cattle were suffering from the effects of smelter smoke than from lack of feed, in view of the evidence given by Allen, Karlock, Evans and Parrott, who state they could not keep their cattle on this range after the Washoe smelter began to oper-*

ate, but that they had to take them away; then what was more reasonable than if Ralph E. Smith found *this the worst injured portion of the Deer Lodge Valley? Is it not reasonable to suppose that Staton's stock losses should be the greatest?*

J. W. MITCHELL, Comp. Wit. (Record 4191, Vol. 11) :

“Q. From your acquaintance with the range, what is known as the Mill Creek range?

A. To a certain extent, yes, sir.

Q. Can you give about the area of that range?

A. Well, I don't know that I can do that. There is quite a big scope of it north of me, and then there is quite a big lot of country south of the hills there; there are quite a number south of me there; there were a few head of cattle in there last summer. I think perhaps they were Mr. Staton's, I don't know.

Q. How long have you been familiar with this range, or how long have you known it?

A. I came there in June, 1900; of course, I was not very familiar with the ranges; did not pay much attention to it; in 1900 and 1901 the range north of me was covered with stock; in 1901 lots of stock there, horses and some cattle, but lots of horses; most of them are there yet (meaning dead).

Q. What have you to say as to the sufficiency of the range to feed the amount of stock that were running on the range at that time?

A. They seemed to do well; there seemed to be plenty of feed for them.

Q. Are they still ranging their cattle there?

A. No, sir; there is nothing ranging there except occasionally you will see two or three horses out there. (4192, V. 11.)

Q. . . *What do you mean by lots of them are there yet?*

A. *Well, their carcasses are there; most of them died there in 1902.*

Q. What is the reason, do you know, that they don't range there now the same as they did in 1900 and 1901?

A. *Well, perhaps the people are like me, they know it will kill them if they put them on there.*

Q. How about the feed?

A. Well, the feed is fairly good; the feed is fairly good for the reason that there is nothing running on it. What I mean by "good" is a good growth.

Q. How is it compared with the year 1901 and 1902?

A. Well, there is not as much feed quite, I don't believe; I don't believe that it is as rank as it was in the Spring, before the stock went on it. (4193, Vol. 11.)

Defendants make statements that are not borne out by the record, except possibly in one instance, the Mitchell-Howard conversation, and the only instance where any one in the valley was advised by a member of the Farmers' Association not to go out to a certain ranch, and this is the only place in this record, and only one man. No evidence that anyone else or any other place mentioned where a person was advised not to go. And what does Howard's testimony show? *It shows that he did lose stock, but claims it was due to other causes.*

Defendants state no substantial injury to crops or stock of the valley—from the Old Works. True, but what does the record show? *That the fumes from the old works took*

a course northerly and westerly and seldom came into the Deer Lodge Valley. Also, the record shows that about one-half the amount of ores was reduced in the old works as compared with the New Works. Also shows that some injury was done by the Old Works—a number of witnesses testifying to this.

They state the sore nose was never heard of in connection with any other smelter.

The above statement is not true. See what the record shows on page 2103, Vol. 6. All Callan's horses, in 1902, had ulcers in the nose.

Page 2106—Dr. Knowles: "I saw both horses and cattle showing similar signs in the vicinity of Great Falls." Page 2107, Vol. 6: In 1903 or 1904 examined 160 head of horses for Cascade Land & Cattle Company, seventy-five per cent of which showed plain evidence of the same condition mentioned before.

"I never saw this condition anywhere else but at Great Falls and the Deer Lodge Valley."

(NOTE.—*The only two smelters where the Butte ores are treated outside of Butte.*)

The defendants claim no injury is shown around Butte to stock, and quote Lavelle, a liveryman *who pastures horses only for a short time*, and principally to rest them up. Does not let any one horse run out for a period of one year. The longest time given in his testimony, if we remember correctly, is six months, and that in only one instance. Raises no stock. The others he quotes are all dairymen who feed large quantities of bran and other commercial feeds, and in no instance have they put a witness on the stand from Butte or vicinity who feeds fod-

ders grown under smelter conditions, except that they show where they fed some alfalfa from the Deer Lodge Valley, grown in the vicinity of Stuart, and their testimony shows that while feeding this hay, *they fed it every other feed and fed hay from other points at the same time.* As to the amount of pasturage near Butte, the Court is as well acquainted as anyone, and *knows, as is shown by Mr. Gillie's testimony, was killed by the sulphur fumes years ago.* See Page 13121, Vol. 33.

Total reduction of Amalgamated at Butte when smelters closed, 3750 tons, while at Anaconda they are reducing 7000 tons. Gillie (states on 12206, Vol. 34 of Record) testifies *more sulphur eliminated at Anaconda than there ever was at Butte under heap roasting.*

73223, Vol. 34: *Gillie testifies that they are eliminating more sulphur and emitting same into the atmosphere at Anaconda at the present time than under the old Short Stacks or in 1902.*

This clearly shows that more *arsenic* is being eliminated from the ores and emitted into the atmosphere.

13118, Vol. 33: Gillie states the Farmers' claims for damages in 1902 were found to have *merit* and were paid.

Why, then, if claims in 1902 were just and they paid them, do they now deny injury? *Mr. Gillie's testimony itself is enough to establish the damage and injury beyond a question of a doubt.*

No witness from Butte vicinity shows that he keeps his stock or feeds as the farmer must do in order to make his business of stock raising profitable, and conditions of feed, care and use are in no instance similar or can possibly be used as comparative conditions in this case.

Conditions on the Bliss ranch and those ranches adjoining.

The defendants *might say, safely*: “*No discomfort to Bliss, the complainant, as he lives several hundred miles from the smelter, but they cannot deny what the tenant on the property says about personal discomfort.*”

Personal Discomfort, as shown by all farmers:

MARTIN J. ELROD, Comp. Wit., (Vol. 17, 6484): Odor of smoke so stifling that he would have to get out of it as quickly as possible.

CONRAD KOHRS, Comp. Wit. (V. 7, 2600): Can trace smoke from smelter to his ranch; readily distinguished by its odor from any other smoke.

R. SMITH, Deft.'s Wit. (Vol. 37, 14574): Smoke strong and disagreeable at the Furst ranch; could smell sulphur. Also makes similar statement to this of another locality.

KENNETH D. SMITH, Comp. Wit. (Vol. 2, 767), said: Smoke striking his eyes would burn; smelled bad and unpleasant to drive through. Noticed same thing on Bliss ranch.

W. P. ROBERTS, Comp. Wit. (V. 9, 3400): The smoke leaves dust on the hay; young man who cut it had cramps and fell off the machine; caused him to vomit; when Roberts himself took his place it affected him in the same way; when Roberts' boy was haying made him sick for a week and swelled his eyes badly; gave him cramps.

W. P. ROBERTS, Comp. Wit. (V. 9, 3407): Has sulphur smell, is yellow, slate or blue color.

C. E. SCHWEND, Comp. Wit. (V. 9, 3532): States that an odor or dust comes up from straw of the grain (when threshing); makes them sneeze and makes his neck raw,

so that he has to use a slave all the time; one evening the whole crew got sick.

JOHN QUINLAN, Comp. Wit. (V. 10, 3582): Can trace smoke all the way from ranch to smelter; has a sulphur smell; can taste it; hurts the eyes badly.

JOHN BOHN, Comp. Wit. (V. 10, 3652): In driving through the smoke one day his wife got so sick that she nearly died.

JOHN MARTIN, Comp. Wit. (V. 10, 3727): Smells the sulphur; sometimes catches him in the eyes; is heavier when the air is damp.

HENRY HOFFMAN (V. 11, 4146): Difference between the sulphur smoke and the other smoke is that you can taste the sulphur.

N. J. BIELENBERG, Comp. Wit. (V. 12, 4531) says: Years ago his sheep died from the yellows at the old works, but he didn't know at the time what it was; they are now dying of the same disease; knows it is smelter smoke; lost eight hundred head in those days and has lost three hundred head that he is sure of.

N. J. BIELENBERG, Comp. Wit. (V. 12, 4462): Dust on hay injures the eyes and makes the men that put it up sick.

FRED J. BLISS, Comp. Wit. (V. 2, 636) says: Smoke is so thick you could not see two hundred feet away; could feel it in your nose and taste it.

BART PARA, Comp. Wit. (V. 3, 1072) says: Smoke thick on his ranch many times; hurts his eyes, and he can smell it.

MRS. HENSLEY, Comp. Wit. (V. 3, 1144): Keeps doors and windows shut on account of smoke; comes in

clouds like a snowstorm and almost stifles them; affects the ranch wherever it hits it, and since 1902 smoke very thick over whole place at times; made them cough and sneeze, and in 1902 it seemed to strangle her daughter; burned inside of throat and nose and cracked their lips.

H. J. QUINLAN, Comp. Wit. (V. 7, 2674) : Smoke looks like a sea of water or a river on his place as you look down from above.

B. F. NOTESTINE, Comp. Wit. (V. 8, 2848) : Can see smoke all the way from his ranch to the works; can smell and taste it.

E. STAFFANSON, Comp. Wit. (V. 8, 2916) : Smoke comes down and sometimes stays the whole day; knows it is smelter smoke by smell, taste and burning sensation in the eyes. Also, page 2939, V. 8, makes his boy sick; gives him the nose bleed.

C. JONES, Comp. Wit. (V. 8, 3010) : Says smoke settles down on his ranch like a cloud; stings his eyes and he can taste it.

ELI DEZOURDI, Comp. Wit. (V. 9, 3171), testified: Smoke settles down and rolls over ranch. Can smell and taste it, and it affects his eyes.

GEO. PARROTT, Comp. Wit. (V. 9, 3171) : States that in traveling along the road smoke would feel like a spark of fire in the eyes; could taste it, and it would injure the throat and make a person cough and smell strong.

WM. T. STEVENS, Comp. Wit. (V. 9, 3232) : The smoke tastes like sulphur smoke; makes you cough and your eyes hurt. Looks like a mist; is whitish or bluish.

N. J. LIFFERING, Comp. Wit. (V. 9, 3294) : Going

through the smoke little particles seem to strike the eye and smarts it. It is misty-white or bluish; smells like sulphur; settles down on his ranch like mist or a fog.

ANGUS SMITH, Comp. Wit. (V. 2, 649): *Says he got a sore nose from stacking the hay the same as the horses had. In 1903 the man that stacked for him quit on account of the effect in his nose and throat, and would sooner go to work in the smelter instead of stacking hay for him.*

W. C. STATON, Comp. Wit. (V. 16, 6247): Frequently in the morning the Valley looks as though it were a vast sea covered by smelter smoke, and the air is entirely clear above it.

(Staton's testimony shows that where he lives is some hundreds of feet above the elevation of the Deer Lodge Valley proper.)

On page 6247, V. 16, Mr. Staton says he does not believe it safe to eat certain vegetables grown in the Deer Lodge Valley, from a personal experience in his own family.

On page 6248, V. 16, state he had had no trouble from eating the roots grown but from eating other vegetables his wife and family have been made sick twice.

Vol. 16, 6249: In 1904 it was after cauliflower came in, which would be about August or September.

Vol. 16, 6249: They were sick again in 1905, along in June or July. Staton's wife and three of his daughters were affected with the same symptoms as the fall before. The first time they had been eating cauliflower, and the second time it was spinach.

Vol. 16, 6250,: W. C. Staton says: On his return home, after the second time, found his wife in the hospital from the effects of it or spinach.

BYRON HOWELL (V. 3, 1023): Bliss ranch worth \$50 an acre; offered that for it fourteen years ago, and it was refused.

(NOTE.—Dan James then the owner.)

Vol. 3, 1024: Not worth anything under present smelter conditions.

ANGUS SMITH (V. 2, 660): Bliss ranch a bargain between 1896 and 1900, at \$10,000 or \$11,000. No value to ranch under smoke conditions

Vol. 2, 661: Improvements worth \$3,000.

K. D. SMITH (V. 3, 789): Bliss ranch worth \$10,000 in summer of 1901.

Vol. 3, 791-2: Not much value to Bliss ranch in 1905 for any purpose.

WM. T. STEPHENS (V. 9, 3230-1-2): Bliss ranch worth \$40 an acre prior to 1902. Now probably worth \$5 to \$10 an acre.

BART PARA (V. 3, 1091-2): Bliss ranch was worth \$40 an acre; not worth that now.

(NOTE.—THESE WITNESSES HAVE LIVED IN THE VALLEY FROM TEN TO THIRTY YEARS.

Defendants say that no injury is shown to the Bliss ranch by the testimony of Bliss.

BLISS: Now, let us see what the testimony does show:

First: On page 572, Vol. 2, the record shows that in 1904 Bliss got an equivalent to \$950 in rent; in 1905, \$100 for the south field; \$25 per month for the north field, or \$300; total rent for 1905, \$400; a loss in rent for that year of \$550. Does not this show injury?

Second: Says ranch was worth \$12,000; is not now

worth over \$4,000, a loss of \$8,000 in valuation.

Third: On page 603, Vol. 2, in June of 1905 "went over the ranch and saw the grass and clover leaves killed in spots."

Fourth (Page 632, V. 2) Saw Smelter smoke on the ranch.

Fifth (Page 634, V. 2): Describes on cross examination condition of vegetation on the ranch in June, 1905.

Sixth (Page 639, V. 2): "*Effect on vegetation could not be caused by frost.*"

Seventh (Page 574, V. 2): The ground has been entirely ruined by smoke fumes, and as I understand poisoned, so I cannot rent it at all.

Defendants criticise Mr. Bliss for not accepting the offer of J. S. Boone of \$500 yearly rental. Is there anything strange in Mr. Bliss doing this, *as the year before* he received \$750 cash and the seeding and plowing of 40 acres to grass, which he states *was worth \$200, or a total of \$950* for the year prior. Was it very strange that he refused to accept *a cut of \$450 a year in rent, and the first one he had at that?* He states he refused it and advertised the ranch *for rent* in the "Anaconda Standard" (Page 593, V. 2). That after he could not rent it himself, states he received answers from all over the country, but could not rent it. Mr. Bliss then says: "I then wrote to K. D. Smith and he rented it for me. I offered it to Boone for \$850, and he moved off." Here Bliss agreed to cut the rent from \$950 to \$850, and could not get it. Bliss says: "I could not do anything with it, and K. D. Smith rented it to Wolf for \$25 a month. ("This is the north half.") The south half was finally rented to Sweeney for \$100 per annum. It

simply shows Bliss was trying to get a reasonable rental for this property, but on account of its damaged condition from smoke he finally had to accept a less price than Boone offered. In Staton's testimony he gives the name of Boone as one of the Farmers whose claim was presented by him to the Company.

Defendants claim Bliss only spent \$16 on the ranch when Bliss clearly stated he allowed \$200 for seeding and improvements to K. D. Smith on the ranch in 1904.

Defendants claim Smith refused to rent to one Blain, a dairyman, who bought Wolfe's dairy cows for fear that the company might be allowed to use it to experiment on (page 23227, V. 59.)

Here again they try to show unfairness on the part of the Plaintiff, the facts are as follows: *The Defendants at this time were in possession and control of the south half of the Bliss ranch and had been for some time, with the knowledge and consent of K. D. Smith.* Even if the facts as stated by the Defendants are true, which the evidence does not show, Bliss stated on page 23228, V. 59, when asked the question "If that was the reason for Smith not renting it to Blain," (as is stated above. A. "I do not know." If such was the case that the Defendants wished to get possession of the *remainedr* of the ranch through Mr. Blain, it clearly shows the unfairness of the Defendants instead of the Plaintiff. It clearly shows that they were not satisfied with the one-half of it which they had at that time but wanted it all. The evidence further shows that Wolfe remained on the ranch for months after this time, and the evidence further shows that Wolfe was not a member of the Farmers Association, never was, nor is now.

The evidence also shows that the Defendants were at all times allowed *access to the entire Bliss ranch*. They were allowed to inspect any and all stock on the ranch at any and all times. Nothing was hidden by Complainant on the Bliss ranch. *Defendants were allowed to put their aspirators on the ranch by Wolfe and they placed Wolfe in charge of them*. Nor could they have concealed any facts, nor was it possible for them (the Complainant) to do so. This record shows that the Farmers Association had absolutely nothing to do with the Bliss ranch nor no member of it after it was rented to the Defendants and Wolfe, *and the only thing K. D. Smith had to do with it was to rent it to the best possible advantage*. They claim Blain was willing to pay a reasonable rental for it, but do not state what that rental was. There is nothing in the record to show any amount offered or made by Blain, but Defendants state a reasonable rental was offered.

A reasonable rental means nothing, for the reason that what Mr. Bliss would consider reasonable, the Defendants would probably consider much too high. Mr. Bliss states he refused \$500 per year from Mr. Boone *for the reason that the year before he had received \$750 cash and improvements to the ranch worth \$200, but finally had to take \$100 a year for the south field and \$25 a month for the north half, as the best offer he could get*. Doubtless Defendants consider a year reasonable rental for the south half of Bliss ranch. Take the evidence of Defendants' witness, Mr. Jesse Miller, who states the Bliss ranch at this time not worth over \$2,500.

What would be a reasonable rental for a property of that value? Say 10 per cent on the value as fixed by Miller,

Defendants' witness, or \$250 a year. This amount would doubtless be considered a reasonable rental by Defendants, *but the ranch was not vacant at the the time Mr. Blain wished to rent it.* Mr. Wolfe was still there and remained there *for months after that time.* It is true Wolfe was only renting from month to month at \$25 a month. If Mr. Blain was willing to pay more he should have offered a higher rental.

Vol. 59, 23230: Defendants show they claim Bliss practically had nothing to do with the case.

See what the Record says (page 626, V. 2): Understood while in Idaho suits were to be brought against the Smelter. Wrote to Mr. Clinton asking him to take my case. Have no contract with anyone except Mr. Clinton.

Record (page 627, V. 2): Mr. Clinton conducts the case for so much money.

Record (page 628, V. 2): As entire compensation I know the evidence gathered by the farmers was to be used in my case, as a *test case.*

Record (page 628, V. 2): I am simply the medium through which farmers of the Deer Lodge Valley are trying their cases.

Record (page 23230, V. 59): *Bliss states every time he comes to Montana he has a sick spell.* "I would not live on the ranch." This last statement shows why Mr. Bliss has not been in Montana more during the trial of this suit.

It will be seen by the record where Mr. Bliss has had to leave the stand on account of sickness on the opening of this case (page 639, V. 2); where Mr. Bliss was compelled to go to a hospital on the advice of his physician. The Defendants well know these facts.

Defendants state John Smith got as fine a crop of oat from the Bliss ranch in 1903 (Record 894, V. 3), as you could see in any country. *This is true.*

Record (page 894, V. 3) : But see what happened to the remainder of the crop. States John Smith seeded this land to alfalfa and clover and the smoke came down there when the alfalfa and clover was about two or three inches high, burning the clover and alfalfa, and at the same *time burned the oats*, and by spring (or the spring of 1904) this fine catch of grass, that was here the year before hardly any of it appeared.

The Court must bear in mind that this was during the year the smelter closed. Oats at July 1st, in Montana are not over *three or four inches in height*, and at that time no stem is started and oats are much more hardy in a young stage than clover and alfalfa. Smith's testimony clearly shows the smoke killed the alfalfa and clover, but the *oats made their growth while the smelter was closed and were harvested; while the clover and alfalfa, being still subject to the fumes after the resumption, were destroyed.* Smith further states, "That *after this fine catch of grass was destroyed the fox-tail* (they talk so much about on the Bliss ranch), came in.

(Record page 859, Vol. 3) : Defendants states Smith ran the ranch in 1904; had twenty-two acres of oats. *True.*

(Record 796, Vol. 3) : See what happened to the oats. Smith states that the smoke *came down there in June*, and the smoke had been there since the night before, and cleared up about 9 o'clock A. M., and he went through the field of oats on the Bliss ranch and *found the clover leaves, the edges turned up as if the frost had been there; two inches*

of the oats leaves were yellow, and in about three days they broke off. I have noticed the same thing on grass leaves and willow leaves after the smoke came down there (Record, page 797, Vol. 3), thick for eight or ten hours. It would take eight to twelve hours to see the effect plain, but you could always see it.

(Record, page 797, Vol. 3): "There was no frost that night."

(Record, page 797, Vol. 3): Next year on this same piece of land oats were sown, and in August, 1904, we had a couple of days of bad smoke, and it turned one-fifth of the heads of these oats white; never filled; *were dead.*

Does any one need to ask as to the crop yield under these conditions? Also *that the testimony of Smith shows that he had to quit his business and leave his ranch, which joins the Bliss ranch.*

The defendants carefully avoided any questions of K. D. Smith as to the crop yield on this ranch that year, but now come in and criticize the testimony on the ground that it was not shown.

See what happened to *his stock in the fall of 1904, when he was leasing the Bliss ranch (page 778, Vol. 3): "In the fall of 1904 my cattle were worse affected than in 1902." I had 62 head on pasture at that time. In August four cows aborted; in September, six; two died in August, fourteen died before Christmas, and I had twenty-two more that I sold for \$150 (less than \$7 per head), that cost me, most of them, \$50 a head, the rest \$40 a head. Smith's testimony shows this state of affairs was while he had the Bliss ranch under lease, and cut the hay on the south field.*

Especially states he cut no hay on the Miller ranch,

which is his own ranch, and is used here under the name *Miller Ranch* to show that the hay he cut, *twenty tons, was all the hay cut in the south field of the Bliss ranch.*

While there is no proof that these animals actually died on the ground of the Bliss ranch, they did die on his ranch, *which joins the Bliss ranch, and while his stock were pasturing and feeding on the foddors grown on both ranches. And can any one claim that these cattle were not as much poisoned on one ranch as the other.*

K. D. SMITH, Comp. Wit. (Record, page 764, Vol. 2) :
“I used the south half of the Bliss ranch in 1904 myself; *cut hay from it and pastured it after the hay was cut.*”

(Record, page 764, Vol. 2) : Says his ranch is known as the Jesse Miller ranch.

(Record, page 794, Vol. 3) : Had about 12 horses in 1904. Their condition was bad. I sold two to a man in October; one of them died in January or February.

(Record, page 794, Vol. 3) : *It was worse in fall of 1905 than in 1904.*

(Record, page 883, Vol. 3) : Stated he rented south field of Bliss ranch in April for \$200 a year (to Pat Sweeney), *and after he saw how his stock was going he would not pay it; then I rented it to him for \$100.*

Defendants quote Record page 656, Vol. 2: States Angus Smith's testimony shows Bliss ranch cut from 170 to 180 tons of hay in 1900 and 1901 and sold for \$8 a ton on ranch. Above is true.

But what about the production since then? 1904. K. D. Smith states ranch would not have cut over 85 tons (page 791), and the hay was of no value for feed. I think it is a damage to a man to feed it.

(Record, page 884, Vol. 3): Sold a small stack of hay cut on the south half field of Bliss ranch for \$5 a ton (this was 1904 crop).

(Record, page 916, Vol. 3): Wolfe cut *only 40 tons* on the north half of Bliss ranch in 1905.

(Record, page 883, Vol. 3): *No hay cut on south half by Sweeney.*

(NOTE.—The above testimony clearly shows that his ranch was not plowed and let lay idle, but was farmed in a good and workmanlike manner *by John Smith and K. D. Smith, and the land was plowed and properly seeded, and not, as the defendants would try and have the Court believe, plowed up, left rough and not seeded at all.* Jesse Miller testifies that the lands along Warm Spring Creek are all similar in character.)

August Smith, complainants' witness, on page 667, Vol. 2, states that when he purchased the ranch which adjoins the Bliss ranch it *only cut 67 tons of hay, and by the plowing up of the wild meadow and seeding of the same in timothy, red top and clover had increased the production of the ranch from 67 tons to over two hundred tons.*

(NOTE.—The evidence shows that John and K. D. Smith, complainants' witnesses, are brothers of August Smith, all engaged in the same business, all owning the same character of land on Warm Spring Creek and adjoining the Bliss ranch; *and the success of August Smith in the seeding of his ranch clearly demonstrates the adaptability of this land to tame grasses.*)

The evidence further shows that John Smith in 1903 plowed up and seeded the Bliss ranch in exactly the same manner in which August Smith had seeded his ranch which adjoined, and as August Smith had made a success of his

place (before the smoke struck it) what is more reasonable to suppose that if it had not been for the killing of the young grass and clover in the years of 1903 and 1904 by the smelter smoke, as testified to by K. D. Smith, that this plowing and seeding would have increased the production of the Bliss ranch instead of decreasing it?

Take Dan James' testimony, who criticised the plowing up of the Bliss ranch, also Jesse Miller, the only two men who testified that the plowing up and seeding of lands to tame grasses in the Deer Lodge Valley is an injury to same; outside of these two witnesses every man who has given testimony along these lines, either for the complainant or defendants, has stated that in the Deer Lodge Valley this plowing and seeding increases the productivity of the land instead of decreasing it. And the evidence of the seeding of this ranch is disputed *by no one who is in position to testify to the facts* except Jesse Miller, the foreman of the Anaconda Copper Mining Company, and *Dan James, who the Master recognized as a hostile witness to the plaintiff, and so stated in the record.*

Dan James' testimony shows that he lived upon the Bliss ranch for over twenty years, and that *only five years of the twenty did he attempt to do any farming.* Also further shows that the only grass seeded on the Bliss ranch by him was a little timothy that he bought in Butte some time in the early days, for which he paid 25c per pound, which was the price for timothy seed about twenty years ago. He does not show in his testimony whether he plowed his land and seeded this seed in plowed land or whether he threw it on the sod, harrowed it or just scattered it over the surface. *This one attempt was the only attempt he ever*

made to grow tame grass on the Bliss ranch. Still he will come in to court and swear that the plowing up of about eighty acres of the Bliss ranch rendered the whole 320 acres practically valueless.

Defendants quote (Record, page 658, Vol. 2) that hay was sold from Bliss ranch in 1904, but don't know the price realized.

Mr. A. Smith, complainants' witness, from whose testimony the above is taken, was not on the Bliss ranch in 1904, and had nothing to do with the ranch, but K. D. Smith *was*, and *testifies to the amount he cut and the price he got for it* (page 7475, Vol. 19).

Sold a small stack of hay from the south field; got \$5 a ton for it. Again the defendants give incomplete testimony.

Take a man who was not on the Bliss ranch and who would not know all the details of the ranch, and ask questions which he must answer in the negative, and incorporate his answer in their Brief, *but fail to put in the answer of the man who did know and so testified.*

Mr. K. D. Smith's testimony shows a great depreciation in yield of the hay crop, over one-half from what it was in 1901; also a decrease of \$3 per ton for hay grown on this ranch, a decrease of 40 per cent.

DR. CHENEY, Comp. Wit.:

Dr. Cheney reports autopsy of farmers' colt on Bliss property. (Record, 6932.)

Q. No. 5.

A. February 19th, 1906, sorrel colt, property of the Farmers' Association. *This colt was slaughtered upon the*

Bliss property, and a sample of the kidney was taken. Dr. Salmon and myself were present.

Q. What was the condition of the colt when it was slaughtered?

A. Well, in a fairly good condition, but with well defined ulcers in the nostrils.

(Record, 6936.) No. 12, February 19th, sorrel colt, property of the Farmers' Association; sample taken was liver; Drs. Salmon and Cheney present. This is the same colt that I spoke to you about where sample of the kidney was taken.

A. Yes, sir.

Q. Did you in each case determine the condition of the animals with reference to whether or not it was suffering from chronic or acute arsenical poisoning?

A. It is my opinion that I did; yes, sir.

Q. Were all of these animals showing symptoms of arsenical poisoning?

A. Yes, sir.

Q. Chronic or acute?

A. Very likely; as I stated before, they had both conditions, but more likely the chronic condition; I think the chronic condition prevails down there. (Record, 6939.)

Q. In these particular cases, with reference to the particular animals that these samples were selected from, other than those concerning which you testified on your direct examination in the main case, or when you were testifying here before, were all of these horses animals suffering from both chronic and acute?

A. Well, I would not say both, attorney; they may have been and might not have been, but as I said I would

not like to state, but they were all, in my opinion, suffering from arsenical poisoning. (Record, 6940.)

Q. Now, did these animals show the same characteristic symptoms that you observed in the animals concerning which you testified heretofore?

A. Yes, very much of a similarity. (Record, 6941.)

Q. Now, this sample, No. 5, was a horse brought by the Farmers' Association and placed on the Bliss ranch?

A. Yes, sir.

Q. You were present at the time of its purchase, you said?

A. Yes, sir.

Q. By Mr. Staton?

A. Yes, sir.

Q. From whom did he buy it?

A. Mr. Wolfe; I don't know his initials.

Q. Mr. Wolfe?

A. Yes, sir.

Q. A tenant on the Bliss place?

A. Yes, sir. (Record, 6959.)

Q. Was it poisoned?

A. You have got my opinion.

Q. Which is that it was?

A. Yes, sir. (Record, 6960.)

(NOTE.—Chemical analysis of the colt by Professor Swain, Page 6924, Vol. 18, shows 13.9 grains in 100 pounds of tissue.)

Q. Have you noticed any diarrhoea in the stock in the summer of 1906 in Deer Lodge Valley?

A. I have.

Q. Can you state where?

A. On various farms on which I have visited; I recall the Bliss farm; I would not say excessive diarrhoea there, but I have seen what I thought to be quite excessive on tract 16, and I can recall seeing cows at High Staffanson's and Para's; I have seen innumerable cases of diarrhoea, but I do not recall where. (Record, 22693.)

DR. FAUNT (Record, 2316):

Q. Have you observed any sore noses among the horses on the Valley recently?

A. Yes, sir.

Q. How recently?

A. I think about a couple of months past, month of January, 1906; that was my last examination, 16th, I think.

Q. And where was that examination made?

A. I went to a number of the ranches, clear down to Mr. Beilenberg's, on Dempsey Creek; took them all in pretty well.

Q. Any in the neighborhood of the Bliss ranch?

A. Yes, sir; on the Bliss ranch.

Q. On the Bliss ranch?

A. Yes, sir.

Q. How many horses did you examine on the Bliss ranch in the month of January?

A. Five, I think.

Q. In what condition did you find them?

A. The condition was just the same as I had observed pretty generally prior to that; they had all lesions of the nostril or sore nose, a coat staring in appearance and a general dejected appearance of the animal; facial expression changed and changed in the gait; the movement of

the limbs did not seem to be under perfect control of the individual subject itself, and a general lack of nutrition of the body; dry, scurfy skin, tucked up belly, as we call it, and the animal looked anything but in a thriving condition; I consider from my view.

Q. Doctor, from your experience in the Deer Lodge Valley, were you able to form an opinion as to the cause of that condition of that animal?

A. Yes, sir.

Q. And what was the cause?

A. I considered it, from the thorough examinations I have gone into and the experience I have had, smelter smoke poisoning, but arsenic appears to be the predominant factor, the most injurious. (Record, 2316.)

(NOTE—Dr. Formad states this steer suffering from an “irritant,” which irritant was shown to be arsenic by the analysis of Dr. Emery and Mr. Kerr of the Animal Bureau of the U. S. See Kerr and Emery testimony.)

ANGUS J. SMITH, Comp. Wit.:

Defendants, quote record page 658, V. 2, states Angus Smith gives description of some of his brother's horses having sore noses on the Bliss ranch and states that is all he says about the Bliss ranch except as to value.

See what the record shows:

Page 642, V. 2, cut hay on the Bliss ranch in 1899, 1900 and 1901.

Cut 170 tons in 1899.

(NOTE—Price paid \$8.00 a ton.....	\$1,360
Cost of cutting and stocking, \$2.00 a ton.....	340
	<hr/>
Profit, prior to smoke	\$1,020

Second year fully as much as the first year.

Third year fully as much as the first year.

Quality of the hay was good, fed it to my dairy cows (page 645, V. 2.) Smoke sometimes so thick at my place you could not see 200 feet away (page 647, V. 2.) Feel it in your nose and taste it and at the Bliss ranch, too.

E. D. WOLF, Comp. Wit.:

States Ed Wolf's cattle were in poor condition in June of 1905.

See what Wolf says about these cattle, how they got in this condition, what was the cause.

Page 901, V. 3—Moved these cattle from Mill Creek, smoke effected stock so I had to move. *Everything got sick on Mill Creek.*

Page 905, V. 3—Abandoned ranch on Mill Creek.

Page 909-910, V. 3—Cows on Bliss ranch got in the same condition as on Mill Creek when the smoke came.

Page 911, V. 3—Cows drop four or five gallons in their milk after a smoke period.

Page 906-7, V. 3—Turned horse on pasture for two days on Mill Creek (in 1905); plenty of food; got so he could not walk in that time.

Page 910, V. 3—Moving from Mill Creek to Bliss ranch had a good effect *while the smoke did not come that way.*

Page 911, V. 3—*When it did they got in the same condition as on Mill Creek.*

The above testimony clearly shows Mr. Wolf knows the effect of the smoke on the stock and explains why his cattle were in poor condition.

Page 911, V. 3, says *stock began to be affected on the*

Bliss ranch in September, 1905; then he took them up and fed them (page 907, V. 3) alfalfa, bran and linseed meal.

Defendants state Wolf would not testify that there was *as much as 25 or 30 acres* on which he cut the 40 tons of hay.

Wolfe (page 939, V. 3) states there was over 30 acres, but would not testify how much more. Page 916, V. 3, *states he cut all the hay that was a profitable crop on the north half of the Bliss ranch.*

So both sides of ranch being equal (but Mr. K. D. Smith) states in his testimony that the *north half* was considered the *best part of the ranch* (page 857, V. 3.) Here we see the great depreciation in yield, but the Defendants try to convey the idea that Wolfe had an excessive crop on this ranch (40 tons) in 1905, when all the testimony in regard to the hay yield shows the ranch cut from 170 to 190 tons a year prior to the smoke period.

Page 938, V. 3—Did not pasture the meadow on Bliss ranch in 1905 prior to cutting the hay.

Defendants quote Wolfe—Put cows on pasture; improved, did quite well.

See what Wolf says on page 910-911, V. 3. *When the smoke came he had to take them up, they got in the same condition as on Mill Creek.*

Defendants quote Wolf—Cows fell off in September after frost had come.

See what Wolf says on page 941, V. 3. *"I did not notice any effect from the frost, but I noticed the effect of the smoke. I noticed the slimy matter coming from the mouths of the cows."*

The Court must take into consideration the fact

that the time mentioned is on or about September 15th (page 911, V. 3), which time, as every one knows, is the season of the year in Montana when no one thinks of taking their stock up and putting it on feed except in the Deer Lodge Valley. If the time was the latter part of October then there probably would be some reason in the claim made to the injury of meadow grass for *milk producing qualities* by frost, but the middle of *September it is absurd*, as the alfalfa hay harvest in Montana is not over at that time, and does the Court believe the farmers of Montana do not carry on their business in a proper manner and harvest their crops prior to frost injury?

Wolfe says at that time saw no injury from frost, but was from smoke, *and Wolfe is supported in his testimony as to it not being frost by Deft.'s Wit., Mr. Strange.* (Record, page 13454, V. 34.) Temperature record for September *shows no temperature at which frost could possibly occur until September 29th, on which date the minimum temperature was 32 degrees and on the 30th, 29 degrees, a degree of cold so slight it would not injure to any appreciable extent the tenderest vegetation*, and there is no proof by any witness that frost did occur at that period, and only that of Mr. Strange's temperature record, which shows *it could not have possibly occurred.*

Here again we see Defendants *theories* are positively disputed by the testimony and by their own witness.

We ask the Court to examine *any release given by a dairyman to the Defendants in 1902-03* that they have introduced into the record and they all show "*for loss of milk.*" K. B. Smith's release, Pat Sweeney's release, W. J. Evans' release and others too numerous to mention. But now they try to show loss of milk is due to every conceivable reason except the main cause of it, *the fumes from their smelter.*

Record page 912, V. 3, Wolfe's testimony shows *that in*

September, 1905, the colts of K. D. Smith, pasturing on the Bliss ranch, developed the sore nose. The Court will note this is the time Wolfe was compelled to put up his cattle. The Defendants, we believe, do not claim frost causes the ulcer in the nose of the horse, but probably they overlooked that point as they claimed every conceivable reason but the true one, *which is the smelter fumes.*

Defendants state Wolfe never stated amount of bran or other feeds used while cows were on pasture. This question was never asked Mr. Wolfe by either Plaintiff or Defendants, but Wolfe does state on page 956, V. 3, on cross-examination, "*I can make very little money on account of having to feed so heavily.*"

Defendants show (Record page 945-6, V. 3) the milk yield on Wolfe's cattle as an average yield of milk. Plaintiff admits Wolfe received an average yield of milk, *but what did he have to do to get it? First, had to take them from the pasture; second, had alfalfa to feed; fed 21½ pounds a day in the barn, besides wild hay from Bliss ranch; gave extra feed and extra care.*

Page 947, V. 3—"Q. *Mr. Wolfe, you do not want the Court to understand that this smoke was the only thing that could have caused the falling off in milk?*

"A. *Well, it is just like this—it is a strange coincidence that the falling off would come when the smoke was bad.*

Defendants quote Wolfe (record 948, V. 3)—Thinks he has gotten a fair amount of milk from his cows while on the Bliss ranch. Record, page 948, V. 3, Wolfe says his cows are better milkers and better chosen than the average herd.

Defendants quote Wolfe (record 909, V. 3)—Gives the feeding but fails to enlighten the Court as to the fact *that all the fodder fed to these cows that was produced on the Bliss ranch was the wild hay fed upon the ground (record 960, V. 3), about ten or twelve pounds to the cow per day, the remainder of the produce fed is bought and hauled there, so the Court can see that Wolfe does not depend on the fodders of the Bliss ranch for his stock, but states on page 958, V. 3, "That he could not maintain his dairy on the fodders produced on the Bliss ranch.*

Angus Smith testifies to the feeding of the Bliss ranch hay for three years prior to the smoke period to his dairy cows with good success and at a good profit.

Note the difference on Bliss ranch prior to 1902 and the *present time*.

Record page 918, V. 3, Wolfe states he scatters the wild hay over a large area on the ground (when feeding), so that if there is poison in it it will not accumulate; by scattering it about, it drops on the ground and the stock will not get it, it will shake out.

Record page 4951, V. 13—Dust from Para hay (joining the Bliss ranch) 682.5 grains As₂₀₃ to 100 pounds dust. Para ranch about one mile west from Bliss ranch.

Record page 960, V. 3—Hay on Bliss ranch cut in August.

Defendants (record page 957, V. 3) states that present time means now, January of 1906, when Wolfe states the pasture at the present time is of no value. But let us go a little further and see what he says.

Record page 957, V. 3:

“Q. Is the pasturage on the farm worth anything to you at the present time?”

“A. No, sir; I would consider it a detriment.

“Q. Under normal conditions would the pasturage be worth anything?”

“A. Yes, sir; I think so.”

Here we give the analysis of the grass from the Bliss ranch, taken February 5th, 1906, taken by Professor Harkins about fifteen days after the time Mr. Wolfe, Comp. Wit., was testifying. See Harkins' testimony (record page 4945, V. 13), showing 126 grains of As 203 to 100 pounds of grass.

Can the Court not very readily see why this pasturage is of no value?

It is shown by every witness on the stand who knew conditions that prior to the operation of the Washoe smelter cattle and horses were allowed to run on the ranges and fields of the Deer Lodge Valley, and fed little or no hay and only fed when the pasturage was eaten off or covered with snow, and this is true in all parts of Montana at this time except in the Deer Lodge Valley.

Defendants (record page 950, V. 3), says Wolfe admits telling Dr. Gardiner that his stock had improved since he went to the Bliss ranch and he had no kick on his cows, that he was doing well with them.

See what he actually says, Wolfe has explained the care and feeding of his cattle as quoted in this Brief, also explained how and why the improvement came about, as shown in this Brief.

E. D. WOLFE, Comp. Wit.:

Cross-Examination.

“Q. Did you not say at this time that it had been or had taken a lot of feeding to get them back in shape that now they were giving an average of about three gallons of milk a day, and further, did you not say, using these words, “I have no kick now on smoke.” (Record page 950, V. 3.)

“A. No, I did not say on the smoke. I said on these cows, that I was doing well now, but I had no kick on the smoke because *they were not getting it, only what they were getting on the hay, the bran was not smoked, neither was the linseed meal.*”

And does not this bear out Mr. Wolfe on direct, where he states *he had to put them up and feed extra in order to get the normal amount of milk from his cows?*

Refendants quote Jesse Miller, Deft. Wit.—Says he has known the Bliss ranch since 1888. Was cold and wet. One year grain would ripen and the next would not. Was farmed before 1868. (V. 49, 19397-8.)

There is one strange thing about the above statement and that is this: Mr. Miller has known this land since 1868, was *cold and wet* (page 19397, V. 49.) Miller says all the ranches along *Warm Springs Creek are of a similar nature*. Is it not strange that Mr. Miller, knowing this land to be *cold and wet, would, after knowing the condition then, purchase land which joins the Bliss ranch on the west in 1886 or eighteen years after he knew this was not good farming land, as he would have the Court believe, and live there for fourteen years, erect the best dwelling house in that vicinity on this cold and wet land where he*

could have no assurance of a crop? How does Mr. Miller's statement agree with his actions? *Not at all.*

Defendants state hay not as good as it used to be, because they plowed up *all the natural hay and never seeded it down.* (Record page 19446, V. 49.)

What does the evidence of Dan James show (V. 11, 4267)? Cut from 160 to 175 acres on the Bliss ranch (immediately prior to operation of Washoe smelter), showing that much *natural meadow land.*

What about the seeding of 55 acres by John Smith in 1903? (Record page 895, V. 3.) John Smith *seeded this land to timothy and clover.* (This applies to 55 acres.)

See what Bliss says: *Allowed K. D. Smith \$200 on rent for plowing and seeding (record page 572, V. 2) forty acres. States this was old land which was reseeded in 1904.* Whose testimony is to be taken here, Mr. Miller's, who, the record *shows* is an adjustor for the Company, or these men who owned or had his land under lease? Miller states thinks \$2,500 is a big price for the Bliss ranch in the condition it is now. *That is true under the smoke condition,* but suppose this ranch was not injured to the extent plowing had done on it. *Then what?*

Can you go anywhere in Montana and buy 320 acres of land of any character with \$3,000 worth of improvements for \$2,500 except in the Deer Lodge Valley? Says it was *all plowed up.* The only evidence of the plowing and all the plowing that was done on this ranch since 1892 does not exceed 80 acres, so Mr. Miller is 240 acres off on that, and only 55 acres on which any grass was ever mowed was plowed, *so instead of all the natural meadow being plowed there was less than one third of it ever plowed.* Record

page 895, V. 3, K. D. Smith's testimony shows of this *fifty acres* plowed by John Smith, *35 had formerly been plowed by Dan James, leaving only twenty acres new ground plowed.*

We think this testimony of Mr. Miller is absurd, and in order for the Court to believe *it must disregard the actions of Mr. Miller in purchasing land adjoining the Bliss ranch, and also all testimony of Bliss, K. D. Smith Augus Smith, Byron Howells, Wm. Stevens and others.*

Mr. Miller makes mention of the Bliss steers, but fails to state that these 15 steers *had the entire south half of the Bliss ranch for pasture*, but this field as shown by the evidence since 1868 up to the year 1905 *was a hay field on which large quantities of hay was cut.* The Defendants claim that these steers only had *average conditions.* Where in the world would you find an intelligent farmer who would *use 160 acres of hay land,* the same as the south field of the Bliss ranch, for pasture for that amount of stock *for about five months, or from latter part of June to December 1st?* The gain of these steers even under normal conditions would not pay the taxes on the land and keep up the fences. Dr. Formad, Comp. Wit. and Government pathologist, states he took one of the *best looking steers in this bunch and killed it and it showed the effect of the trouble in the Deer Lodge Valley, a steer raised in Idaho and only kept in the Valley five months and given extra care, and still the best looking ones showed the effect of an irritant. Note—Or arsenic.*

Mr. Kerr and Mr. Emery of the Government Bureau testified to finding arsenic in all the samples of tissue

sent them from the Deer Lodge Valley by Dr. Formad. (V. 57, 22768.)

PAT SWEENEY, Deft. Wit. :

Defendants quote Pat Sweeney.

Let us see who Sweeney is, is a dairyman, *owns no land and never farmed in the Deer Lodge Valley.*

Defendants states (record page 8264, V. 21) Sweeney rented the south half of the Bliss ranch in January of 1905 for \$100.

See what K. D. Smith, Comp. Wit., states as to this rental proposition (V. 3, 883.) Rented the south field to Pat Sweeney in *April, 1905, for \$200 a year, and later on he refused it at that price.*

“And I rented it to him for \$100 the entire south field.”

Record 8340, V. 21)—Rented this place about *July v, 1905. ...Took cattle out September. Note—Used it only two months.*

If Mr. Sweeney had thought conditions were right on this ranch why did he go back on his rental *proposition?*

Defendants quote Sweeney (8271-2, V. 21)—Cow and calves ran on the Smith ranch and Bliss ranch in summer of 1905 and cattle did fine.

Probably Mr. Sweeney's cattle did the same in 1905, as he testifies they *did in 1902.* (8238, V. 21.) “Cows did *fine in 1902.*” (8241, V. 21.) “*Had no trouble in 1903; everything done fine in 1903.*” “*Got a calf from every cow; calves did fine.*”

Now we will look at a few of Mr. Sweeney's statements in the record as well as show what he did. V. 21, 8353.) Says cows lost milk in 1902. Put in damage for smelter

smoke in 1902; was paid for it (V.21, 8354.) Put in damage for extra hay fed in 1902. (V.21, 8355.) That when he signed the release he also signed away all future damage to that stock "*and to my business.*" (V. 22, 8370.) States he has *sold all his calves since 1902.*

Where did he get his calves to run on the pastures of the Bliss and Smith ranches in 1905?

"I never raised any stock (V. 22, 8372.) I don't figure on raising stock." "I had one mare die in 1905, one cow died; she did not die; I knocked her in the head. (V. 22, 8373.) One got hurt in the barn. *Two more I killed in the fall, in November, 1905.*

Still things were fine, did not allow his cows to die, he killed them.

Record page 8373, V. 22, denies the statement made on direct (page 8241, V. 21) that every cow had a calf in 1903; admits some did not calve, two or three (out of 27 head); we think his testimony shows he had that number in 1903.

Record page 8375, V. 22, *sells his calves when from two to three days old.*

Record page 8386, V. 22—Sweeney's release where he was paid \$1,100 on the 19th day of January, 1903, for damage caused by the smelter to 31 milch cows, 5 horses, *loss of milk*, extra feed, all damage to by business as a dairyman, *all damage that has occurred or may hereafter occur from the operation of the Washoe Smelter.*

Record page 8350, V. 21—No sickness among his stock in 1902, clearly showing the trouble he had in 1902 was from the smelter, but swears on page 8237, V. 21, *cows did fine in 1902.*

Record page 8392, V. 22—*Put in damages for twenty cows not in calf in 1902 on account of poison damage. Company paid a portion of this.*

Does the Court believe this testimony in the face of the fact that he was paid \$1,100 damage on a dairy of thirty-three cows and five horses?

Record 8351, V. 21, says he put in a claim for \$1,100 and "they paid me every dollar I put in."

Now we will see if Mr. Sweeney is not again stating things that are not true.

Record 8393, V. 22—Sweeney acknowledges a bill to be in his writing signed by him, showing *he actually put in a bill for \$2,925 for damages to the Defendants in 1902*: where on page 8351, V. 21, swears they *paid him every dollar he put in* and states that to be \$1,100, when in fact they paid him \$1,825 less than he claimed on a bill of \$2,925.

In this bill are the following items, page 8393, 2,000 gallons of milk.

July 22, 1902. to \$60, unnecessary feed to diseased cattle. (V. 22, 8394.)

\$125, hay for September.

\$40, extra bran, September, 1902.

\$100, hay and bran August, 1902.

States his cattle were all smoked at that time. (V. 22, 8395.)

Record page 8327, V. 21—Sweeney states, as excuse (when it was shown by his own figures he could hire the hay cut on the Barnard ranch and all work done and make a profit by selling the hay on the ranch in the stack) that he would not have the ranch unless he lived on it and that

his lease so showed. *Lease was demanded produced in Court.*

Lease produced in Court and examined and no such clause found in the lease. (V. 23, 8919-8920.)

Here again Mr. Sweeney is shown to have been disputed by *documentary evidence.*

In 1905 Sweeney states (8271, V. 21) every cow had a calf.

In 1903, no trouble with stock; every cow had a calf. (V. 21, 8241.)

Nothing wrong in 1905.

But they paid him \$1,100 damage in January of 1903. *What for?*

For loss of milf, \$400.

Extra feed, total, \$325.

Must have paid to balance \$373 damage to stock, as he owned no land.

Page 8395, V. 22, states cattle all smoked in 1903.

(NOTE—How can we account for this strange state of affairs? Only in this way, that in 1902-03, Mr. Sweeney was running a business for himself and was depending on that business for a livelihood, but in 1906, the time he gave the above strange and contradictory testimony, he was working for the Defendants as a foreman on one of their ranches. It is very evident that Mr. Sweeney was trying to take care of his job.)

(NOTE—This man's testimony shows that even when the smoke was at its worts in 1902-03, as a dairyman, he could and did protect his stock from death or any abnormal amount of sickness. Can the Court see any difference between the condition of his dairy herd in 1905 than it was in 1902? This man's testimony shows exactly what the farmers state, that in order to pro-

fect their stock they have to put them in barns and corrals and feed bran and oats and other feeds, and this is what the dairymen are doing at the present time.)

Defendants say Mr. Sweeney states his milk business is profitable.

Let us see how profitable. Mr. Sweeney (V. 21, 8367) states profit increased from \$700 in 1902 to \$1800 in 1905. (V. 21, 8292.) Now works for company for \$3.00 a day.

How does it come that Mr. Sweeney, as a reasonable man, sells a business which is increasing in profit at such a rate and when he has it to a point of clearing \$1800 a year, sell this business on time (see Vardaney testimony) and go to work for some one else *where he can only earn \$1095 a year and work every day in the year, out of which he must sustain himself and family, which will cost under the most favorable conditions \$1.50 a day or one-half his total salary, \$542.50? He has left clear profit of \$542.50 as against \$1800 in his business, or a loss yearly of \$1257.50. Is this reason? No, decidedly no. It is not a fact. Mr. Sweeney's actions contradict, absolutely, his statements.*

(NOTE—*The facts are unquestionably as follows: Mr. Sweeney, on account of the excess feed and care he had to give his stock made no money.*

His testimony shows cattle did die, also one of the two horses he had on pasturage died on the K. D. Smith ranch; lays the death of this horse to over driving, but admitted it was turned on pasture some time before it died, also admits it had a *sore nose*.

Is it not more reasonable that Mr. Sweeney, seeing the same conditions (as testified to by all the farmers) and

having *signed away all future damage to his business as a dairyman, got out at the first chance he got*, well knowing he could not again collect for any damage to his dairy business and he did not care to take chances on present and future losses to his stock? This can be the only logical conclusion from Sweeney's testimony and not that he would quit a business he had followed all his life and go to work for some one else, where he would clear less than one-third of what he was clearing on his dairy business. It is not reason; it is not common sense to so suppose.

Defendants quote Sweeney says Wolfe's cattle and horses were poor when he went to Bliss' ranch, but look fine now.

What does Wolfe, Comp. Wit., say? Did not allow his horses to pasture. Kept in the barn and fed. (V. 50, 1972.) "I stabled them and fed oats and bran."

What does Wolfe say about his cows and what feed they got and what kind? (V. 3, 908): "Fed cows alfalfa hay, bran and linseed meal."

Record 911, V. 3—Cows began to be affected *about September 15th; took them up and fed them.*

Record 912, V. 3—Pastured six horses in 1905. (Note—On Bliss' ranch.) Got sore noses; hair standing up; were sick. (Four of these K. D. Smith's colts.)

Record 918, V. 3—Fed linseed meal to counteract the smoke.

"Gets alfalfa away from Bliss' ranch."

"Alfalfa grows quicker and has less poison from the smoke; that is the reason I feed it."

Sweeney testifies to mixing the hay bought at Staton's sale with alfalfa.

Testimony of K. D. Smith, Angus Smith, Dan James

dairies on the native hays grown on Warm Springs Creek and others state, prior to 1902 they maintained their and with good results. Now all feed alfalfa, bought at a distance, at this time.

E. D. Wolfe, Comp. Wit., states on page 957, V. 3, *he could not maintain his dairy on the fodders of the Bliss ranch (dairy consists of 21 cows), and does not do so, as his testimony shows he buys alfalfa hay to feed his cows.*

See what Dan James says about the amount of dairy cows he kept on the ranch and sustained on the fodders of the ranch prior to 1902. (V. 11, 4263.)

James states dairy consisted of 40 cows and six or eight head besides. Does not state the amount of horses kept, but doubtless 8 or 10 head. Wolfe only has one-half as many and can not maintain those on the Bliss ranch at the present time.

Record page 4264, V. 11—Dan James' evidence also shows *he had hay to sell and did sell hay in 1902. (Left over from 1901 crop.)*

“Q. What did you get a ton for it?

“A *The biggest portion (I fed part of it) I sold in February, 1902; I fed part of it the first year too. I went into the dairy business in the fall of 1900, I believe.*”

The above statement of Mr. James clearly shows he not only maintained his dairy of twice the size of Wolfe's but sold the *larger portion of his hay.*

Defendants' brief, page 2950, V. 8, states Sweeney did not feed any heavier in 1905 than in 1901.

On page 8306, V. 21, Sweeney gives the total amount of hay fed in winter of 1901-02 (the feeding season) as 78½ tons.

On page 8308, V. 21, admits 33 minimum to 34 maximum cattle, and from 3 or 4 horses in fall and winter of 1901-2, 36 to 38.

Take the smallest number 36 head, he had fed $2\frac{1}{4}$ tons to the head. Fed to stock in 1901-2.

Take the amount Sweeney claims he *actually fed* between January 1, 1905, and January 1, 1906, or 295.5 tons to the average of stock he had, as shown by the statement in this Brief, or 83 head. We have an average feeding per head of *3.53 tons* to the head, or $1\frac{1}{2}$ tons to the head more than in 1901.

Clearly showing by Sweeney's figures given on cross-examination that his statement as to feeding no more hay per head in 1905 than in 1902 is false.

Now let us see what Sweeney fed in the winter of 1902-03 or feeding season in fall of 1902-03. (V. 21, 8238-42-43.)

34 tons Boobey.

$19\frac{1}{2}$ tons Jorgenson.

45 tons Reaves Binard place.

$99\frac{1}{2}$ tons.

On page 8387, V. 22, Sweeney's release to company for damages shows 31 cows and 5 horses, or a total of 36 head on January 19, 1903; fed 99 tons to 36 head of stock, or 2.7 tons per head during the worst smoke period.

Page 8236, V. 21, Sweeney states put up his cows in August, 1902. (V. 21, 8246-49-50.)

	Tons.
Fed winter, 1903-4, Binard hay	70
Fed winter, 1903-4, Burder hay	20

Fed winter, 1903-4, Hensley hay	50
Fed winter, 1903-4, Evans hay	4
<hr/>	
Total	144

Page 8333, V. 21, had 72 head of cattle and six horses; two tons to the head on the Binard place in winter of 1903 and 1904, about the same amount per head in 1901, or before there was smoke damage in the Valley.

This feeding in winter of 1903 and 1904 clearly shows the Binard place little affected, as Mr. Sweeney states, also the Court *must take into consideration that the smelter was closed in 1903 during the greater part of the growing season in the Deer Lodge Valley.*

Sweeney's testimony shows he sold his cattle in April, 1904; went into business again in January 1, 1905, so can't give full feeding for winter of 1904 and 1905, but had to take January 1, 1905. This record actually shows as to Sweeney feeding of hay per head for the different years as follows:

Winter 1901-2, 2 1-4 tons per head.

Winter 1902-3, 2 1-10 tons per head.

Winter 1903-4, less than 2 tons per head.

January 1, 1905, January 1, 1906, *admitted figures* by Sweeney, taking 90 head of stock as the average number fed $3\frac{1}{4}$ tons per head. But figuring Sweeney's stock by number and hay bought as given by him on his cross-examination, *which shows his average of stock was only 83, he actually fed 3.53 tons to the head, almost twice as much as he fed per head prior to 1902.*

Sold dairy in April, 1904; had to take cattle back in January 1, 1905. (V. 21, 8256-7.)

Sold again on March 10, 1906. (V. 21, 8266.)

Here he gives eight and nine acres all the hay land on K. D. Smith's ranch. If Sweeney is telling the truth here, Smith, the owner's, testimony is false. Smith states he cut 97 tons of hay on this ranch in 1901 besides 15 tons of oat hay. (V. 21, 2866.)

Here is a ranch of 240 acres used as a dairy farm with only 8 or 9 acres of hay land, according to Mr. Sweeney. This testimony is false on the part of Sweeney as the record shows.

We think it well to insert here what Mr. Sweeney thinks of the range on the east of Deer Lodge Valley.

"I valued the range near the Binard place at as much as the ranch." (V. 21, 8323.)

Grass begins to get dry in July and is not much good for milk, but that is the time cattle put on the feed. Would have to feed more bran up until after the hay was cut, then would turn them on the fields. (This time would be in the Deer Lodge Valley, September.) This grass would generally renew itself, grow up on the stubble and produce more milk. (Talking of Binard ranch.)

Pastured milch cows on Binard place from April 26th to September 28th. (V. 21, 8324.)

Sweeney states Binard, Purdee, French Crossing (which last is owned by the A. C. M. Co.) and Ed Whitcraft ranches are the clearest places in the Valley from Anaconda smelter smoke.

The Court will notice Mr. Sweeney can pasture the Binard place from April 27th to September 28th, but can only pasture the Bliss ranch from July 1st to September 1st, or two months; while most of the time the pasture on

the Binard place was the *hills* or *range* to the east; while the *Bliss pasture* was the *south half of the range* or a *hay field*.

He says after *haying on the Binard place*, which would be in *September*, the cows improved in their milk, while on the *Bliss ranch* on *September 1, 1905*, had to take them from the pasture and feed them on account of the failure in milk. And as all the dairymen who have testified in this case show, the first effect of the smoke on dairy cows is failure in their milk. What is clearer, after the above testimony than that the smoke is affecting the Bliss ranch?

The Court will note that Binard, Purdee and Whitcraft are not members of the Farmers' Association.

Sweeney states had a surplus of milk, *an overflow of milk in 1903*. *Has raised no calves since 1903*. Is it not strange that the only year Mr. Sweeney had a surplus of milk or raised any calves was 1903, when the smelter was closed? (V. 21, 8330.)

Mr. Sweeney states he is a member of the Farmers' Association. This must be an error in our copy. *He is not a member, never was*. (V. 21, 8343.)

Admits 90 head of stock would be a fair average number kept by him on the K. D. Smith and Bliss ranches from January 1, 1905, to March 10, 1905, at which time he sold his dairy to John Varlanie. (V. 22, 8415.)

John Varlanie states they are getting better prices for milk in 1906 *than ever before*, 22 cents a gallon wholesale. (V. 23, 8833.)

This probably accounts for the fact that they are making a small profit.

Defendants quote Sweeney states colts of K. D. Smith

on the Bliss ranch in fall of 1905 had sore noses, *but were in fine condition.*

This is a *clear misstatement of the record*, by Defendants' counsel.

Record 8428, V. 22, Sweeney says:

“Q Do you remember the Kenneht Smith horses?

“A. *The colts?*

“Q *Yes, sir.*

“A. *No, I do not. I had not seen those colts—the ones that he had on the Wolfe pasture (or the Bliss ranch?)*

“Q. *Yes, sir.*

A. *No, I was not over to visit at all.”*

There can be no mistake in testimony like the above, the animals are properly designated, who was the owner and where they ran, by Defendants try to *offset the testimony of K. D. Smith in regard to these colts by twisting the record.* During the trial of the case before Judge Crane, when Mr. K. D. Smith was on the stand, Mr. Kelley for the Defendants asked to be allowed to send Dr. Gardiner to examine these colts. (Mr. Smith had taken them up and they were being cared for in Anaconda.)

Mr. Smith stated he would be pleased to have the examination made by experts on *both sides.* Dr. Gardiner never came, did not go near them, and they come in with a misstatement of the record and try to offset the testimony of Mr. Smith and others in that manner. Dr. Gardiner *would never go and examine any stock in connection with experts for Complainants, although invited to do so, and Mr. Kelley's asking for permission to examine these colts was a bluff and nothing else.*

K. D. Smith states on page 793, V. 3, July 3, 1905, left

on the Bliss ranch until later part of October.

Now we will see how Smith's sworn testimony agrees with *Defendants' statement*: *Bad nostrils, almost closed up; hair turned toward their heads; dead on their feet; tired out going six miles; two in bad condition yet; two head has improved, kept these colts up in box stalls in livery barn in Anaconda; feed oats, hay, bran and condition powders.*

The Defendants state these horses were in *fine* condition. How does the sworn statements of Mr. Smith agree with the statement of Defendants, *which is only a statement of the Defendants' attorneys and not in the record at all?*

Smith states two in bad shape yet, or at the time he was giving his testimony, about January 20, 1906, or *about three months after taking them from the pasture.*

Smith states that two of the colts *are in worse condition than when taken up.* Gives Mr. Kelley permission for Dr. Gardiner to examine these colts, also agrees to have experts for complainant there for a joint examination, and states it will give him great pleasure ofr the examination to be made. But, the Defendants' representatives *did not appear.* ...Why? ...Because they knew Mr. Smith was telling the truth, and the only way they can attacq this evidence is by misquoting the record and attempting through their Brief to put words into the mouth of Sweeney, which the record shows he did not say. We ask the Court here if it looks like the Complainant is trying to cover up facts and mislead the Court as to *true conditions.* Does it not show that the Defendants are *afraid to investigate facts?*

Defendants quote (record page 8429, V. 22)—Horses in

poor condition when brought to the ranch. This statement of Mr. Sweeney's does not apply to these colts at all, but to *one horse and not horses*. We give the testimony in question and answer form here. (V. 22, 8429.)

“Q. Did you turn the horse belonging to Kenneth Smith in the south field or the one you had there?”

“A. Yes, sir.

“Q. What shape was he in?”

“A. He was in awfully poor condition when he came down there. He picked up a little bit, he picked up so they could drive him.

“Q. How was he when he left there?”

“A. *I did not see him when they took him up. Mr. Wolfe took him up.*

“Q. Did you notice his nose after he ran there awhile?”

“A. Yes, sir, he had a *sore nose*.

“Q. Wasn't he in pretty bad shape, poor flesh?”

“A. He was in better condition when Wolfe took him up then when I took him down.

“Q. I thought you did not see him at that time?”

“A. *I saw him when they drove him but I don't know how long they kept him up.*”

See what Wolfe says about the Smith colts. (V. 3, 912-913.)

“These colts were in good condition when they came to the ranch. In September their noses became sore, their hair standing up and general dumpish condition. Did not have much life.”

“Q. Did they have a sick appearance?”

“A. Yes, sir.”

Now we come to what Wolfe says about the K. D. *horse*

Now we come to what Wolfe says about the K. D. Smith horse and not horses, as Defendants state.

“Only one horse in the south field and that was K. D. Smith’s. (This field Sweeney had under lease 1905.) (V. 3, 913.)

I could not state as to his condition when he was turned in there, I just noticed the horse there. He was there about a month. Smith told us we could get him up and drive him. (V. 3, 913.)

I got the horse and brought him in and he showed the usual effect of smoke. (This stricken by the Master “The usual effect of smoke.”) His nose was sore and hair standing up. Fed him in the barn for a week before we drove him.” (V. 3, 914.)

Does not Sweeney’s Statement that he did not see the horse when taken from the field(and he does not say how long before he was taken out that he did see him), also Wolfe’s statement that he fed him in the barn for a week before he *drove him at all*, absolutely disqualifies Mr. Sweeney as to testifying to the condition of this horse when taken out by Wolfe. It clearly shows Mr. Sweeney is again overstating things.

Wolfe states he could scarcely get this horse to town and back, a distance of seven miles. He got weak, would stagger. They don’t travel in a straight line, weave from side to side. (V. 3, 914.)

States was a horse naturally of good life. (V. 3, 915.)

JNO. VARLANIE, Defts. Wit:

Defendants quote record 8864-5, V. 23, John Valalnie’s

testimony says worked for Augus Smith on the Bliss ranch in 1902, and says the *cattle did not die and did not fall off in milk.*

Now we will see what the record shows in contradiction of the above statement, and this man is the *only one in the record who does make any such absurd and false statements as to conditions on this ranch in 1902.* (V. 3, 647.)

AUGUS SMITH, Comp. Wit.:

“Q. Describe the conditions of your stock in 1902-3 and up to the present time—what happened to the cattle?

“A. Well, *most of them died on me:* they got sick on me in the fall of 1902. I lost a good share of them and what I did not lose, they got in such condition, I could not use them for dairy cows.

“Q. What was their condition?

“A. The first I noticed they got poor, lost their calves; some died, then they would not take their feed, and it was the same condition, to a certain extent, to the cows I was milking. The cows I kept in the stable most of the time got along a little better than the ones running outside.

In a few weeks after they were smoked they did not give any milk.

Horses got sore noses. I lost a great many horses but the ones I kept in the stable and fed grain, *I did not lose.*” (V. 2, 648.)

JNO. VARLANIE, Defts. Wit.:

The Court will again notice that this witness, A. D. Smith, Comp. Wit., states that in 1902 stock kept in barns and fed did not suffer in comparison with the stock allowed the natural forage of the Valley.

Smith states Company paid him \$4000.00 for damages up to this time (December, 1902, to January, 1903,) this was while he was on the Bliss ranch as shown by defendants witness, Varlanie, and Mr. Kelley says the only proof of, and death on the Bliss ranch was one calf. (V. 2, 696.)

Varlanie swears no trouble to Smith's dairy or stock during this period and defendants quote his testimony in the face of the fact that they admit damage in 1903 to stock and farms of the Valley, and paid \$4000.00 to Smith for such damage.

The above state of facts, which are undisputed in this record, shows Varlanie is swearing falsely.

Smith states Mr. Scallon, who was managing Director for the Defendant Companies, acknowledged at that time the ranch was damaged and agreed, and did pay for the damage to the business and stock, and these facts as to damage in 1902 have been admitted time after time in this record and they even ask for a finding to the effect that they paid in excess of \$300,000.00 in damages to stock and crops in 1902. (V. 2, 697.)

This statement is undoubtedly so false that it clearly shows the bias and prejudice of this witness. If not prejudice, his absolute ignorance of conditions in the Deer Lodge Valley.

Defendant quite Varlanie, Record 2417-18, V. 7, says that only cows who fell off in milk were the ones killed for Tubercuulosis.

The Record shows that the first cattle killed in Deer Lodge Valley for Tuberculosis was at Bart Para's place, in the spring of 1905. See Dr. Cheney's testimony, or two years after the time he was working for Angus Smith in

the Bliss ranch and *not*, as one would infer from reading Defendants' Brief, which would lead one to believe it to be 1902 on the Bliss ranch.

Smith's testimony, where Defendants introduce Smith's Release, which shows they paid for damage to stock, and damage to business, also for extra hay and grain bought. (V. 2, 699.)

Smith states they have omitted in their release "187 tons of hay on which they paid me \$7 a ton damage; this \$4000.00 damage *was on personal property*. (V. 2, 700.)

Varlanie states he never saw a sore nosed horse in Deer Lodge Valley. (V. 23, 8902.)

The above clearly shows this man had *paid no attention to conditions in the Deer Lodge Valley* and is not competent to testify; this is the most charitable view that can be taken of his testimony.

Verlanie, Deft., states cattle killed by Dr. Cheney did not have tuberculosis and *he has one yet that Cheney condemned for tuberculosis, which is giving four gallon of milk a day*.

..Here is a man who milks and sells the product of a condemned *tuberculosis cow, after being told she had tuberculosis*.

This man's or rather boy's testimony is too absurd for consideration. Varlanie gives his age as near *22 years, born in Austria*.

(NOTE—The testimony of Morgan Johnson, Deft. Wit., in Comp. Brief shows conditions in the A. D. Smith Ranch, which joins the Bliss ranch, practically as shown by complainant on the Bliss Ranch.)

The Court will notice, as shown by the testimony of

Harvey Showers, Frank Threlkeld, Bart Para, all neighbors of Mr. Johnson, Deft. Wit., that they had *hay to sell*. Mr. Showers was offering his hay for \$2.00 a ton; Mr. Para for \$4.00 and Mr. Thelkeld about \$4.00; still Mr. Johnson, Deft. Wit., goes *nine miles further away from the smelter* to buy his hay and pays from \$2.00 to \$4.00 a ton more for it than he could buy it for in his immediate vicinity. See what Harvey Showers, Comp. Wit., states the company paid him for his hay in 1902, page 6794, V. 18. "Paid me \$6.00 a ton for it in the stack for 1902 crop." (This hay was redtop, wild hay and clover, page 6794, V. 18.) This was *paid as damages* to the hay.

HARVEY SHOWERS, Comp. Wit.:

"This hay was *burned by Jesse Miller*." Showing that hay in this vicinity was considered worthless by Jesse Miller, Deft. Wit., and the company in 1902. (V. 18, 6795.)

No Crop cut in 1903 on this ranch. (V. 18, 6795.)

1904 crop cut by Angus Smith on shares and is there yet. Can't sell it. Did not cut the crop in 1905, (V. 18, 6796.)

Not worth harvesting. No value, was not salable. (V. 17, 6797.)

Not salable on account of the smoke. (V. 18, 6798.)

Staton testifies Showers instructed him to sell his hay for \$2.00 a ton, also that he *could not sell it at that price*. (V. 18, 6818.)

Showers Ranch farmed for thirty years. (V. 18, 68050.)

Showers never sold hay on this ranch which was undamaged for less than \$6.00, average price prior to the operation of the Washoe Smelter, \$7.00 a ton in the stack. (V. 18, 6810.)

Showers testifies to instructing Staton to sell this hay cut in 1904 for \$2.00 a ton. Defendants paid Mr. Showers \$810.00 damages in 1902 for hay and pasturage and four horses. Does not facts as above given, clearly show something wrong in this vicinity from the smelter? First *A. C. M. Co. burn the hay on the Showers ranch* cut in 1902. Has only cut his hay one year since that time and can not sell it at \$2.00 a ton, not enough to pay for cutting and stacking it. *But*, the evidenc of numerous witnesses show *that prior to 1902 all the hay grown in the vicinity of Mr. Johnson's* was sold at a *minimum price og about \$7.00 a ton in the stack* and *stock did well ou it*, and *does not Johnson's own admission to Para*, where he stated to Para *that his cows were drying up* show no value to hay in this vicinity? The Court will further notice by the testimony of Wolfe, Sweeney, the only other two men who are conducting a dairy east of Anaconda or Warm Springs Creek and selling milk in Anaconda, that *they also buy hay at a distance from where they conduct their dairies*. Why did they not buy this hay close to home, *if it was not injured?*

Dan Thomas, witness for defendants, states hay he put up a year ago, *horses would not eat it*. Prior to Washoe Smelter hay was first rate, also on the *Showers ranch*. (V. 46, 17993.)

Johnson, Deft. Wit., lost six or seven calves in 1905. (V. 25, 9638.)

Had three slung calves this spring. Admits probability of five dead calves at his place in April. (V. 25, 9639.)

Admits hay cut on the Angus Smith ranch not suitable for dairying. (V. 25, 9642.)

(NOTE—But all the evidence in this record shows all hay cut in this vicinity was used with *good* success prior to the operation of the Washoe Smelter and here Deft. Wit. states not suitable at this time for dairy purposes.)

(NOTE—Here again we see why Mr. Johnson *goes nine miles further away and pays more for hay, and this also shows why he demanded a reduction in rental.*)

This Record is full of testimony where hay in this vicinity sustained the dairy *cows successfully prior to 1902.*

Admits he told Angus Smith he was not getting the amount of milk from the hay he should at the time he got the reduction in rent and *tried at that time to just rent the barn and house.* (V. 25, 9643.)

(NOTE—Does not this clearly confirm the evidence of Wolf *as to the Bliss ranch having no value except for the improvements?* Here again the witness for the Defense confirms the witnesses for the Complainants. Here is a ranch which *prior to 1902 cut over 200 tons of hay of good quality.* (Angus Smith states in 1902 the company paid \$7.00 a ton damages to his hay.) Smith also states kept as *high as 200 head of stock on this ranch prior to 1902.* Everything in the record shows *this was a fine ranch. Defendants did not even attempt to show an ymismanagement or neglect of this ranch and here we have the admissin f the tenant, Mr. Johnson, Deft. Wit., who wanted only to rent the house and barn. Did not want the pasture or anything that grew on it, but would rather buy hay from a distance.* Does not this one admission of Johnson give the *lie* to every statement he has made as to the value of the foddors of the Smith ranch for dairy purposes at this time?)

Would like to call the Court's attention at this time to

the decrease in the dairy industry near Anaconda. See testimony of K. D. Smith, page 788, V. 3.

“There is about one half as many dairymen now as formerly. That is about the best industry there at present, as they ship in a good deal of the stuff they use and their stock has to be kept up about eight months in the year and fed in stables which a stockman can not afford to do.”

The Court will also note on page 669, V. 2, that on the ranch Mr. Johnson is now leasing that Angus Smith kept 200 head of stock prior to 1901.

(NOTE—*More stock than is now kept on the K. D. Smith ranch, the Bliss ranch and Mr. Johnson’s or the Angus Smith ranch, combined, and the Court will find that these cattle and horses were sustained by the hay and grasses of this ranch, to-wit: the Angus Smith ranch; no evidence in this Record showing any hay being bought and hauled to these ranches at that time. There was sufficient grown there for their needs, but what is the condition there now? Johnson has about ninety head on the Angus Smith ranch; buys most of his hay at a distance. Wolf has about thirty head on Bliss ranch, buys most of his hay from a distance. Pat Sweeney on the K. D. Smith or Miller ranch buys all of his hay at a distance except about twelve tons. Use this last ranch all for pasture. But prior to 1902 Mr. K. D. Smith cut 87 tons of hay and 15 tons of oat hay on this same ranch and kept twice the number of stock Sweeney or Varlanie has ever had on that ranch.)*

These facts to the number of stock kept and production of crops on these ranches, *are undisputed in this Record.* The Court will further notice the Defendants paid \$14,000.00 in damages *on the stock, hay and dairy business on these three ranches in 1902,* and we again call the attention of the statement of Mr. Jno. Gillie who stated

under oath that the claims of the farmers of the Deer Lodge Valley at that time were *found to be just and were paid.*

All the farmers swear positively that the conditions of their stock and crops are the same as they were at the time, and in no place in this Record have the Defendants shown in any case that any individual farmer has testified to conditions different from what he states, and the Defendants have not even attempted to show different conditions from what the farmer testified to as to his individual farm and conditions of his stock, and the Court will see that up to the time the Complainant closed his case, the Defendants had men investigating all the farms in the valley or during the periods of 1905 and 6. The Defendants' witnesses to-wit: Gardiner, McEachran, McCleary, Crosswhite, Thomas Blankenship, Traphagen, Smith and others have not been able to dispute in any specific manner any of the sworn evidence of the farmers except in the following manner: They would be asked a question about as follows: "How was Mr. So and So's crop this year?" Answer about as follows: "Looks good, looks fine." But could not give the yield in any instance. The Court knows that the Defendants' measured the hay in 1902 and the testimony shows they measured all the hay in the valley in 1905 and in no instance did they introduce any evidence of actual measurements to show a farmer was wrong in his statements.

The men who made these measurements were witnesses in this case to-wit: *McCleary, Crosswhite and Thomas*, and all swore the valley *looked* better than in years, but these men when on the stand were not asked anything about the actual yield. *Why? Because their measure-*

ments undoubtedly showed *less hay in 1905* than in 1902, but they failed to show in one single case different from what the farmer himself testified to.

But suppose their measurements of hay in 1905 (which all the testimony as to climatic conditions for that year show was favorable for the production of hay) showed an *increase*, would they not have introduced it? *Most assuredly they would*, but they could show nothing different from the farmers' testimony, *a decrease*. They can get and did get men to ride through the valley and *look and testify from the eye*, that crops were *fine, better than in years*, but these same men did not give the result of the yield in hay for a *single farm* in the valley, including the *farms of the Defendants*.

The Defendants say poor farming, lack of water, no fertilization, bogs, frost, fungi, sunscald, alkali, fox-tail, too much water, lack of drainage; but if these things are causes, did they not exist before 1902? Take the testimony of Prof. Traphagen, Defendants' witness, when asked as to how the Staton ranches are cared for, and he states 14127, V. 36. "*Staton ranches are well cared for.*" *No neglect here. But what does Staton's testimony show? His hay crop increased every year up to 1902; and a steady increase in the yield since that time.* Also numbers of the witnesses for Defense state Beilenberg's and Jacques' farms well taken care of. These men *also testify to a steady decrease in their crops since 1902*, as does every farmer put on the stand *except Parker and Bowman*, two witnesses for the Defense. One lives seven miles above Anaconda and the other fourteen miles north and east. *Not a man testified but who stated crops had decreased in yield in vicinity of*

the Bliss ranch.

Take the ranch on which Mr. Dan Thomas lived, the P. Thomas Estate ranch. Does he claim an *increase in production*? *No, but shows on the contrary a decided decrease.* Here was a *farm in possession of one of the star witnesses for the Company.* Can he show any conditions different from the Bliss ranch? (17940, V. 45.) Thomas shows first began work for Company three years ago. (17993, V. 46.) States did not cut the hay on this ranch, W. P. Thomas ranch, last year of 1905. Horses would *not eat this hay.* *Prior to 1902* never refused to eat it. *It was first rate. . .*

Thomas, Deft. Wit., states had been buying hay for his horses.

Thomas (page 17994, V. 46) prior to Washoe Works this hay always cut and had a ready market, while at this time (November, 1906) still stand, there *unfed and unsold.*

Thomas, Deft. Wit. No stock on Warm Springs Creek now, only a couple of dairies. (V. 46, 17998.)

Does not the condition on this *W. P. Thomas ranch* and in possession of Defendants' witness, show the same condition as the Bliss ranch? *Stock won't eat the hay; can't sell it.*

Thomas, Deft. Wit., buys outside hay to feed his horses in Anaconda. Pays \$20.00 a ton for it. This witness shows he pays \$20.00 a ton for hay to feed his horses while he has hay standing in the stack on his own *ranch.* (V. 46, 18011.)

Johnson admits he thought there was more money for him in working for \$4.00 a day than in running a dairy on the Smith Ranch. (V. 25, 9646.)

(NOTE.—*Undoubtedly Johnson was right in this. Angus Smith, the owner, testifies, on page 660, V. 2. "I know no one can make a living farming on any of these ranches." (meaning Bliss ranch and ranches along Warm Springs Creek) Page 662, Smith states is working for dages in Vutte at this time. (January, 1906.)*

On these pages Johnson testifies to the men leasing his dairy on the A. D. Smith Ranch and throwing it up, *and not paying him a cent.* (V. 25, 9647-8.)

Johnson, Deft. Wit., "as soon as fox-tail is cleaned from a horse's mouth, he recovers if fed good hay." V. 25, 9651.)

Fed lots of fox-tail hay to cows; *never noticed any effect on the cows.* (V. 25, 9653.)

Admits hay bought of Joe Jacobson had fox-tail in it. Cows did fine on it; they did all right. (V. 25, 9654.)

(NOTE—Complainants' witnesses again sustained as to the action of fox-tail in hay on stock; makes horses *mouths* sore when fed in the barn. *No effect on cattle.*)

Johnson, Deft. Wit., horse that had a sore nose ran on the Storm and K. D. Smith ranches, also Gibb's ranch. This was a two year old; ran out all winter. (V. 25, 96545.)

(NOTE—These ranches all in vicinity of the Bliss ranch.)

Johnson only used Daniel James' Estate ranch for pasture, 180 acres, from May 10th to June 10th, or one month. (V. 25, 9657.)

There were stacks of hay in this James Estate ranch with the fences down so cattle could run to them all the time. (V. 25, 9658.)

Stated tried to buy some of this hay but they wanted!

to much for it; they wanted \$4.00 a ton. (V. 25, 9659.)

(NOTE—This statement of witness clearly shows how he values hay cut in that vicinity considers \$4.00 a ton too much.)

Never knew hay to sell for \$4.00 a ton prior to erection of Washoe Smelter.

(NOTE.—The Defendants ask the Court to find that the farmers have a good and ready market for their produce at Anaconda, still *here is hay for sale for \$4.00 a ton*, and Mr. Dan Thomas, a witness for the Defense, states this *ranch cut god hay prior to operation of Washoe Smelter, and Mr. Dan Thomas lives adjoining this ranch on the east, and was buying hay in Anaconda about this time. Shipped from outside points at \$20.00 a ton, paying a difference of \$16.00 a ton, and still Defendants claim hay normal in quality and price in the Deer Lodge Valley.*)

Not as much smoke on the Harper place as on the Smith place. (V. 25, 9661.)

(NOTE.—Harper place west of Anaconda, Smith place in the Valley east.)

Johnson—*put in by Defense over the ruling of the Master. (V. 25, 9668.)*

Smith stated to me if it was not for the smoke he would not rent his ranch. That prior to that time he ran his dairy successfully and got lots of milk from the hay grown on his ranch.

Johnson states that he knows the farmers are only looking for the truth. (As to smoke conditions.) (V. 25, 9675.)

Malt is *cheaper* feed than bran. (V. 25, 9675.)

(NOTE—Also states is better feed than bran to pro-

duce milk. Still under these conditions his actions show it is more profitable to work for \$4.00 a day than to run a dairy on Warm Springs Creek, and so does Mr. Sweeney, although he does not state, as did Mr. Johnson. The evidence shows he did quit the dairy business to go to work for less, to-wit \$3.00 a day.)

Johnson. "Dealers in Anaconda have to pay at least \$12.00 for hay in Anaconda at the present time, for hay from the Bitter Root or outside points." (V. 25, 9678.)

No hay ever stood on the James Estate place from year to year prior to construction of Washoe Smelter. (V. 25, 9679.)

No hay cut on this ranch in 1905.

This ranch is the one where he stated they asked *too much* for their hay when they *wanted* \$4.00 a ton. Note the difference as to conditions in this vicinity before and after the erection of the Washoe Smelter.

Defendants' quote Johnson has been conducting a dairy in Deer Lodge Valley since 1900. (Page 8551, V. 24.) September, 1904, moved to Angus Smith's ranch, adjoining the Bliss Ranch. Paid \$1,000.00 a year rental for it, 1904. (Page 923, V. 3.)

Angus Smith, (page 719-20, V. 2) states Johnson has a lease for three years and Johnson *tried to throw up the could help it.*)

Page 9599, V. 25, Johnson admits on this page he *asked Angus Smith to reduce his rent* and stated the reason *was on account of the smoke*, also admits *he did get the rent reduced.*

LEE BLAIN, Deft. Wit.:

Defendants state cows bought of Boone were at one

time on the Bliss ranch, gives record page 817, V. 3, on which page nothing shows; evidently an error in paging.

(NOTE—*Defendants have in their possession a bill filed by Mr. Boone for damages to his dairy while on the Bliss and other ranches.*)

Defendants state Blain wanted to rent the Bliss ranch, but what does he swear he wanted to pay for it? *\$20.00 a month, (page 24452, V. 62,) for the north half. Not interest for value of improvements.* Is it any wonder Smith told him he could not have it? *Wolf was paying \$25.00 a month at this time and stayed there for months after that.*

Blain and Orm's testimony only shows this, that by doing their own work they ran a small dairy at a profit. Knew nothing of farming conditions in Montana; have only been in Montana a short time and knew absolutely nothing of the usual mode of handling stock in the Deer Lodge Valley. All their testimony does show, is, that they were willing to pay more for the dairies of Wolf and Boone than they considered them worth, so they sold them to them.

The testimony also shows they paid higher prices for dairy cows than ever was paid before or since, to-wit: *\$55.00 a head for all the cows in a dairy.* Varlanie, the only other man who has bought dairy cows since 1902, *got his for \$40.00 a head.* What these men did, clearly shows they were strangers in the country; knew nothing of conditions in the Valley; paid \$15.00 a head more for cows than other people were paying. Their testimony is only valuable on one or two points and is as follows: Only going to show that where they are and have been conduct-

ing their dairy business, the smoke does not come very often, *but is very valuable to the Complainants to show the decrease in the hay production on the Henault ranch on Lost Creek, where their dairy was located for a short time, or fall of 1905.*

Their testimony coupled with the testimony of Frank Hanault, shows a great decrease in the hay yield on this ranch. The Court will also see that *this ranch is owned by one of the Defendants' employes, also a witness for the Defense.*

Frank Henault's crop, page 7801, V. 20, in 1904 was less than in 1902. Can't tell how much it cut prior to 1902. Henault's testimony shows a decrease in the hay yield since 1902. The only year he can give us any idea of the yield is the year of 1904. Henault states on page 7804, V. 20, contracted to John French 80 tons of *timothy and red top*. "*I sold some to other parties. Did not have enough to finish French's contract. There was alfalfa besides this*"

Now we will see what Blain testifies they cut in 1905.

"Cut in the year 1905 sixty-five tons on the Henault ranch, *forty tons of which was alfalfa.*" (V. 22, 8468.)

Here we see that Henault in the *year of 1904 sold 80 tons of timothy and red top, and would have filled his contract to John French but he sold to other parties.* His testimony shows he had 80 tons *to sell* of timothy and red top, not all the hay he cut that year of this class, but *sold* that amount.

Blain states he cut 25 tons of *wild hay, showing a decrease of 55 tons on the timothy and red top meadow.* We put in this statement of Blain's where he claims *this was wild hay* to show this man's complete ignorance of the

quality of hay. Mr. Henault, the owner of the ranch, *states he cuts no wild hay on this ranch, all timothy, red top and alfalfa*, and this witness can not tell *timothy and red top from wild hay*. He can tell the difference from alfalfa and other hay but his testimony shows that is about all he does know.

Henault, Deft. Wit., states that in 1904, page 7804, V. 20, cut alfalfa besides this 80 tons. Blain in 1905 testifies page 8468, V. 22, cut forty tons of alfalfa.

Page 8470, V. 22, Blain states his young stock ran on the hills the summer and fall of 1905 *but* page 8469, V. 22, *he pastured his dairy cows in the hay field*. Here we have another illustration *of the difference in care of dairy cows at the present time as compared to their care prior to the smoke trouble in the Deer Lodge Valley*. There is *not a single case cited in this record where prior to 1902 that the dairymen of the valley pastured their hay field prior to cutting and stacking the hay grown thereon, but the record is full of the pasturing of the hay field since the smoke trouble and prior to the cutting of the hay*.

The dairy men at *this time use the hay fields for pasture, where prior to 1902 they used the ranges near their farms and pasture lands for that purpose, and in no single instance can the defense show that a cow was ever allowed to pasture in a hay field in the Deer Lodge Valley prior to cutting the hay thereon, prior to 1902*.

Note these men who *pasture their hay fields* Morgan Johnson, on Dan James Estate ranch, 180 acres in this field used from May 10th to June 10th. Johnson also shows pastures. Angus Smith, meadows to about June 1st. Jno. Varlanie and Pat Sweeney pasture all the K. D. ranch

where Smith cut over one hundred tons besides pasturing twice the stock that Varlanie has. The south field of Bliss ranch always used for a hay field prior to 1902. There is not a man selling milk in Anaconda who is located on Warm Springs Creek in D. L. Valley proper *who does not pasture his meadows prior to cutting the hay thereon, at this time. Where are conditions the same as before the smoke trouble in 1902? The dairymen do not conduct their business as they did prior to 1902 but have turned the meadows of these ranches on Warm Springs Creek into pastures, in order to try and get a normal milk supply in the summer season.*

Take the Bliss ranch as an illustration. It supported in the year of 1901 a dairy of forty cows and Dan Jones sold the *most of his hay*. In 1900, 1901, cut 170 to 190 tons of hay.

What did it do in 1906? *Wolf's dairy of less than thirty head kept on the north half, pastured for about three months. Most of the hay fed to these cows was alfalfa bought at a distance. The Company pastured 15 steers for about five months on the south half and these steers then were not beef. Leonard Pearnon, Deft. Wit., states they were only in condition for feeders, and no hay cut on this ranch at all in 1906.*

The *entire ranch* was used for the pasturing of about forty-five head of stock in 1906, and then only allowed to pasture in the case of Wolf's cows from *June to September*. *Company steers were pastured from June 29th to about December 1st*, during which time these steers were taken to the Deer Lodge County Fair and to Section 16.

Does not this show cattle are used differently and given

better care than they have ever been given in the Deer Lodge Valley prior to operation of the Washoe Smelter?

Suppose that a farmer could pasture thirty stock cows and fifteen steers on the Bliss ranch for four months in the summer without any loss, and had to use the entire 320 acres for that purpose. *Is not this ranch practically valueless if it can only be used in this way?*

The Defendants did not give a fair test as to stock conditions when they used *steers* in their test on the Bliss ranch, but should have put on a mixed herd, cows, calves and young stock. They chose the hardest animals, *steers*. Put on no horses or *she* stock.

E. W. Orme, Defts. Wit., gives practically the same testimony as *Blain*, his partner in the *dairy business*, and quotes his testimony on page 8663, V. 22, to show the condition of the stock and also that he was desirous of obtaining the Bliss ranch.

See what the Record of his testimony on page 8663-4, V. 22, shows: In *January, 1905*, Boone's cows were on the Bliss ranch in the barn. Also his horses were not running out, were being fed *ray* and bran. The hay was obtained at a distance from the Bliss ranch, or north of the George Jacques ranch, and the record shows all hay sold from this ranch is *alfalfa*. What does this class of testimony show? Simply this: *Bone was using the buildings, buying his feed frm a distance and feeding it n the Bliss ranch.* That is all, *nothing in this Record* to show the feeding of any of the foddors of the Bliss ranch by Boone.

Orme states on page 8664, V. 22, Boone horses were *fine*. But Orme states Bone does not turn them out, feeds in the barn and his testimony, as given before in this Brief,

states are not fed the fodders of the Bliss ranch.

Orme states he was desirous of getting the Bliss ranch. *Why?* Let us see: Page 8664, V. 22. "Seen this place in *January* (for the first time) *and wanted to get it.*" Now we submit to the Court, what would a man know of a ranch which he had never seen before, as to its production when he only saw it in *January?* He must have wanted it for the *improvements alone.*

Orme states: "It had *a good barn, good conveniences. I liked the place.*" Mr. Orme does not state *one thing about the production of the ranch or cared what it produced.* Say Blain only feeding hay which he states was not grown on the ranch.

But, as to Mr. Orme being desirous of getting the ranch, no one ever heard of this until Mr. Orme testified. What does Mr. Bliss state? That he refused Boone's offer of \$500.00 a year for the entire ranch. "Mr. Boone moved off, then I advertised it in the *Anaconda Standard and could not rent it.*" Mr. Orme was still in Anaconda or vicinity. Did he ever go to Bliss or Smith and try to rent it? No.

This was *only in the mind of Mr. Orme* and never came out until he became a witness.

Blaine and Orme's *testimony shows that there is less smoke west of town, where they are located, than in the valley, and this alone disqualifies any inferences that may be drawn from conditions, as they find them west of town, as compared to the Bliss ranch or the valley proper.*

The Court will notice about the experiment of the Bliss steers; were all young stock, two years coming three years old. They were weighed June 29th, again in September, or

a period of eighty-six days. They give twenty-three days in their Brief, or a gain of 1.78 pounds per day. These steers were Idaho steers and picked stock, in breeding as well as thrift, and the Court will notice the time on which they were on pasture, *June 29th to September 26th*. Were taken away and weigher, *about the time this portion of the valley was becoming affected badly by the fumes of the smelter*, as all the farmers evidence. Wolf. Sweeney, Varlaine, Jergenson, K. D. Smith, Angus Smith, Para, and all the men who reside there, *state along in September their cows are taken from the pasture and fed*. The Defendants knew the most favorable season on these ranches and they utilized that period for their weighing experiments.

See analysis of grass on Bliss Ranch and that vicinity; shows a gradual increase the longer it is exposed to the smelter fumes. You find the *least arsenic in June* and the *larger amounts in the late fall and winter months*, and the *pasturing of a few steers for a limited period of eighty-six days absolutely proves nothing, as to there being no injury to the Bliss ranch*. The evidence shows 1906 was one of the rainiest seasons in the Deer Lodge Valley known in years, and the *testimony of Defendants' witness, Ralph E. Smith, states such a season would increase the sulphur damage and lessen the arsenic effect*. But these steers showed the evidence of the arsenic damage, as shown by Dr. Formad, who states "an *irritant* was at work on these stock," and he states he killed the best looking one and Drs. Emery and Kerr state arsenic in quantities were found in all tissues analyzed; showing that even for the limited period for which they were left there *they were beginning to show the injurious effects of the smelter fumes*. Samples

sent to the Department of Agriculture showed arsenic in large quantities, which was the irritant alluded to by Dr. Formad. Even the organs of the deer or the wild animals in the vicinity of the Deer Lodge Valley showed arsenic.

Defendants state this is all the Record concerning the Bliss ranch. We think that the Court will find very much more testimony regarding the Bliss ranch. The Defendants failed to give any chemical analysis for *Arsenic in the soils of the Bliss ranch*. Even Traphagen admitted he found arsenic in the soils of the Bliss ranch, *but did not determine it, but he purported to determine everything else but the main issue in this case, arsenic*. Why did he not complete it? *Because there was too much arsenic there*. That is the only inference which can be drawn from an *incompleted analysis*.

Take the testimony of Wolf, who says no value to Bliss ranch except the improvements. K. D. Smith states it is a detriment to a man to feed the fadders of the Bliss ranch. Take Dan James' testimony, a witness *who was introduced by the Complainants but who was a hostile witness, whose testimony as to the ruin of the ranch by the plowing of eighty acres is absurd*. Pat Sweeney, Defts. Wit., swears on the other hand it is the *finest pasture on earth*. Still, Pat Sweeney went back on his bargain for \$200.00 a year for the south field and would only give \$100.00 for 160 acres of the *finest pasture on earth*. Take John Thomas' testimony, who farmed this land in the seventies; *states he raised one hundred bushels of outs to the acre on this land*.

Take the testimony of Miller, who had known this ranch since 1868, and *who says all the land along Warm*

Springs Creek is similar, but when he wanted a home he bought the adjoining ranch to the Bliss ranch, which A. M. Walker states, on page 8712, V. 22, of his testimony, they valued 160 of the Miller or K. D. Smith ranch while owned by Miller at \$35.00 an acre. This was prior to the smoke trouble and all the testimony shows the Bliss ranch is a superior ranch to the ranch of K. D. Smith or the Miller ranch.

As to this Bliss ranch only being good for wild and red top hays, it is amply disproved by the evidence of every witness for the Complainant in the record. Who have they to dispute what the Complaint says about the Bliss ranch? First, Jesse Miller, who has been employed by Defendants for years; Crosswhite, another man hired expressly to procure testimony and testify in this case; John Thomas, a capitalist, who has the bulk of his fortune invested in Anaconda, whose actions contradict his statements as to the character of this land; a man who bought this ranch in the early days when such ranches as Jacques', Staton's, Furst's and others were vacant government land. All the testimony shows this was the first settled ranch on Warm Springs Creek. The old-timers must have been very foolish to settle on this stream if it was cold, wet and alkaline. *Dan James swears this ranch was a better ranch when he sold it than when he bought it, twenty years before..* If this was not a first-class piece of land, why was it settled so early? We don't hear anything about its cold, wet character prior to 1902. B. Howells states he offered \$8,000.00 for 160 acres of the Bliss Ranch in 1888.

All the facts as to prices paid and offered for this ranch dispute all the testimony as offered by the Defense as to its

character. Then we have Blankenship, a man who never farmed a day in his life; Traphagen, also in the same class, both *theoretical* farmers, and Ralph S. Smith, who never was in Montana prior to this case and whose principal business is investigating the diseases common to the culture of fruit.

The Defense could not get a single witness (outside of Miller and Crosswhite, both Company employes) who had ever lived in the Deer Lodge Valley to state the Bliss ranch was not a good ranch prior to the smoke trouble and was well taken care of. All this alkali, cold wet ground and fox-tail, lack of farming came all at once. Hay yield decreased in two years over fifty per cent, but was cutting more hay when James sold it in 1901 than ever in its history. It is impossible for a ranch to deteriorate to such an extent on account of cold, wet soil and alkali in two years.

Not a man who *was not under salary* (except Jno. Thomas) testified to the cold wet nature of this ranch.

They state no claim of loss on this ranch in live stock except one calf. See what Angus Smith says about his losses in 1902; lost most of his stock, was living on the Bliss ranch at that time as shown by Varlanie, Defendants Witness. Company paid him \$4,000.00 damage. See Kenneth Smith loss in 1904 while he had the Bliss ranch under lease; and the Defendants would try and deny injury to this ranch, even in 1902, as to loss of stock on this ranch at that time, 1902, which they know of their own knowledge is true. Nothing has been allowed to run at large on the Bliss ranch in the cattle line since 1904, for a period of over about four months, and any horses left out any length

of time got sick and had to be removed to save them.

Mr. Kelley speaks of the sore nose on this ranch which all the farmers state only came after the operation of the *Washoe Smelter*. Dr. Knowles, Dr. Cheney and Dr. Faunt Comp. Wits., all state this is due to arsenical poisoning. Here we refer the Court to pages 22369 to 22387, V. 57, of Professor Harkins' testimony where he gives the analysis of the scabs taken from sore nosed horses in the Deer Lodge Valley, showing the presence of arsenic in large quantities. Also the testimony of Dr. Salmon, who states it is caused by arsenic, and the testimony shows every horse allowed to run at large on the Bliss ranch for any length of time became sick and developed ulcers in the nose. Miller, McCleary and Knowles all state that a sore nosed horse was considered a smoked horse in 1902 and 3, and was paid for as such; as do all the farmers testify that the first symptom noticed in the horse is the *sore nose*.

John Varline, Defts. Wit., states he worked for Angus Smith on the *Bliss* ranch in 1902. On page 8863-4, V. 23, Smith testifies to large losses in 1902. Dan Thomas, Defts. Wit., states Angus Smith lost most of his stock in 1902. Company paid Smith \$4,000.00 damage in 1902. Defendants claim nothing was shown to the amount of the *crop on the Bliss Ranch in 1902*. We think the paying of \$4,000.00 in damages to the tenant on this ranch in 1902 must necessarily explain what happened to the *crop*, as well as the stock in 1902.

See the testimony of K. D. Smith *as to his stock losses* in 1904 while leasing the Bliss ranch, which loss was enormous. The Court can see by the losses of these men while on the Bliss ranch that the statement that the record

only shows the loss of one calf on the Bliss ranch is not true. But on the contrary the losses of Angus Smith in 1902 on this ranch were great in both cattle and horses; also the losses of K. D. Smith in 1904 were great, and K. D. Smith states that in addition to the ones that died he sold twenty-two head for \$150.00, which cost him about \$50.00 a head, and in the face of such testimony as above, the Defendants in their Brief state the record does not show loss or damage to stock on the Bliss ranch from 1901 to the present time except to one calf.

The statement of Defendants that the greater part of the ranch has been exclusively used for pasture since 1901 is not true, nor borne out by the record. Jno. Smith farmed the ranch in 1903 and the record shows he plowed up fifty-five acres, thirty-five of old land and twenty would have to be new land, and seeded it to alfalfa, clover and oats. In fact, Jno. Smith farmed more land on the Bliss ranch in 1903 than had ever been farmed in one year in the entire history of the ranch. *K. D. Smith farmed and re-seeded to grass forty acres in 1904, which seeding was killed by the smoke, as shown by the testimony of K. D. Smith. K. D. Smith's testimony also shows that after cutting and harvesting the crops on the ranch in 1904 the fields were used for pasture.*

In 1905 Wolf states he did not use the meadows on the north half for pasture prior to cutting the hay but cut all the hay that was worth cutting, and this 1905 is the first year that the south field of the Bliss ranch was used exclusively for pasture, and then by Defendants' witness, Sweeney. In 1906, the Defendants themselves used the south field for pasture, and there is no evidence in this

record to show that the greater part of the Bliss ranch has been exclusively used for pasture since 1901, *but only the south half by Defendants' witness, Sweeney, and themselves.*

The Defendants take a contradictory stand in the relation to the farming of the Bliss ranch. They put on Miller, Crosswhite and James to show that by plowing up about 55 acres of the ranch, and the farming of the same, it is practically ruined, and now come in and state by the failure of the proper farming and being, as they claim, mostly used for pasture, crops have been as good as could be expected.

The 1903 crop on the Bliss ranch was not shown for the reason that Mr. John Smith, the man who could give the actual production, had removed from Montana.

In 1904 Mr. K. D. Smith, Comp. Wit., states the entire ranch would not cut over 85 tons of hay; he only cut twenty tons of hay on the south half of the Bliss ranch in 1904, and states positively that twenty tons was all that was cut on the south half that year, and not, as Defendants states, sixty-five tons cut by K. D. Smith on one-half of the ranch. Here again Defendants have misquoted the record.

Defendants state no damage shown on Bliss ranch in 1905. *The record does show decided damage in 1905 on the Bliss ranch.* In 1905, the north half, Wolf only cut forty tons of hay, all that could be cut, and the meadows were not used for pasture; *less than one-half normal amount of hay cut in 1905 on the north half.* Wolf states

had to take his cows from pasture in September when the smoke came down there.

Here comes Sweeney's statement again, *finest pasture on earth*, which he could only use from July to September 15th, or a little over two months. *Horses got sore nose in this pasture in 1905. The only one turned there could not be driven to town without giving out.*

Defendants quote Sweeney, Defts. Wit., as stating cattle of Jenderson ran on the Bliss Ranch and prevented the cutting of more hay on the Bliss Ranch. *1905 is the year Sweeney rented the south half of Bliss ranch, in 1905 in January for \$200.00, and threw it up at that price, but afterwards, in July, rented it for \$100.00.* The evidence of this record shows hay was cut every year in the south field of the Bliss ranch until this year, 1905.

Mr. Sweeney's Deft. Wit., evidence shows in regard to the above statement (which is only a statement of the Defendants' attorneys) that he *did not cut any hay or attempt to cut any*, but turned his cattle into the meadow and used it for pasture, the first time in the history of the ranch it had so been used.

The Defendants also state that Byron Howell's testimony shows the Jenderson cattle were in good condition in 1905 while pasturing on his and at times on the Bliss ranch, in 1905. This is another misquoting of the Record. Mr. Howell, Comp. Wit., states on page 1023, V. 3, "Jenderson's cattle *were not looking good. Were looking bad.*" Mr. Howell also states that all the horses running out in that vicinity had sore noses in 1905. "Also there is a bunch ther now (January, 1906,) with sore noses." Page 1022, V. 3.

Defendants state Wolf's crop cut in 1905, or forty tons, which Defendants construe as to being cut from twenty-five or thirty acres. *Wolf* states he cut *all* the hay land on his half of the Bliss Ranch. K. D. Smith and B. Howells state the north half is the best part of the Bliss ranch. Average cutting for three years prior to smoke, 180 tons, or 90 tons for the north half. *Shows Wolf's hay croy in 1905 was one half short*, and not as Defendants' construe it.

Defendants state that Mr. Boone's results must have been good in 1904, as he wanted to lease the ranch for a period of two or three years, but the claim of Boone was filed against the Defendants and W. C. Staton's testimony shows he presented that claim to A. J. Shores, President of the Washoe Copper Company.

Here again we have the defendants' attorneys in argument disputing the sworn testimony of witness. The Defendants' attorneys know this statement of Boone not presenting a claim for damages to be untrue, and is shown in this record in Staton's testimony.

Again Defendants refer to K. D. Smith cutting sixty-five tons of hay on less than half of the Bliss Ranch; K. D. Smith states in 1905 the entire Bliss Ranch would not cut over eighty-five tons, and states specifically that he only cut twenty tons on the south field. And furthermore, Mr. Smith's testimony does not state that he only had the south half of the Bliss ranch that year. He states he rented the Bliss ranch that year. He states he rented the north half to Boone in *the fall* of 1904 and the testimony of Orme shows that when he saw Boone's stock in January of 1905 he was feeding hay grown from a distance. And the selling

of this hay to Johnson, about sixty-five tons, and the twenty tons Smith testifies was all he cut in the south field, of Bliss ranch, make the eighty-five tons *he testifies, the entire ranch cut in 1904 clearly showing Smith cut the entire ranch in 1904 to get eighty-five tons, absolutely disputing Defendants' assertion that he cut sixty-five tons on less than one-half of the Bliss ranch in 1904.* . And here again we see Defendant's conclusions disputed by facts in the record.

Defendants refer to the *splendid* results of Wolfe while on the Bliss ranch.

First, how are they obtained? And as to their being splendid, Wolf states *he can make but very little money on account of having to feed so heavily*, and where does he get his feed? Not all grown on the Bliss ranch but *very little of it*. None of the hay grown on the Bliss ranch fed in the barn, *but fed on the ground so as to allow the poison to shake out of it and not accumulate*, as it would if fed in a manger. *See analysis of dust in hay on Para Ranchs (Note—Near Bliss Ranch.) 68½ grains arsenic to 100 pounds of dust.* And Wolf's testimony *positively says that the Bliss ranch has little value except for the use of the improvements*, and his testimony *positively states he could not maintain his dairy of about twenty-five cows on the product of the Bliss ranch at this time; while the testimony of Dan James states prior to 1902 he maintained a dairy of twice the size of Wolf's on the Bliss ranch, and did not have to buy hay, but maintained this dairy and sold most of the hay cut on the ranch; while Wolf buys most of his hay and hauls it to the ranch and feeds it, and whatever results Wolf obtained on the Bliss ranch was from feeding alfalfa*

hay, bran and oil meal, *and stabling his cows nine to ten months in the year.*

Defendants claim that the Complainant claim the feeding bran and oil meal is an antidote for arsenical poisoning, and from the way they state it in their Brief, it is entirely different from the way Complainant does claim.

The Complainant does claim there is less poison in the hay than on the grasses; that the cutting, stacking and handling of the hay shakes more or less of the poison from the hay, and by the feeding of bran, oats and oil meal, or concentrated feeds, does benefit the stock, *as it causes them to eat less of the hay and pasturage than would be necessary to stock that subsisted on the fodders of the valley alone, and necessarily reduces the amount of poison taken into the system. And in this way the oats, bran and oil meal are an antidote, but no one has claimed that oats, bran and oilmeal are, or are not, a direct antidote for arsenical poisoning.*

But all the testimony in the record shows you can not maintain stock in normal condition on the pasturage and hay of the Deer Lodge Valley at this time, while formerly, or before 1902, they could and did do so; while at the present time, in addition to hay and pasturage, they have to feed oats, bran and oil meal. If Defendants want to construe the facts as given above as a statement that bran, oil meal and oats are an antidote for arsenical poisoning, they are welcome to do so, and all the testimony on the subject shows that the first step to preserve your stock is to take them from the pasture and *feed hay, then oats and bran and oil meal*, and the chemical tests show more arsenic on the grass and less on the hay, and the actual experiments

in the stock business show the same, that the stock do better on fibay than on pasture, at all seasons, except probably one or two months when the grass is growing rapidly, and chemical tests show very little arsenic on the grasses at that period.

The injury by smoke is shown to every ranch near the Bliss ranch; Showers ranch (abandoned), Dan James Estate (Ranch abandoned), P. Thomas Estate ranch (abandoned), no farming or hay cut in 1905. Reduced yield and damage to stock on Threlkeld Ranch, Angus Ranch, K. D. Smith ranch, Howell Ranch, (abandoned,) no farming or crops cut; Jergenson Ranch shows horses all had sore noses and Jersenson states can't say how much he is damaged. *In fact, every man who has lived in that secton, whether for Complainant or Defendants, states ranches are not in the same condition as to productions as prior to the operation of the Washoe Smelter, and there is no stock kept on Warm Springs Creek in the vicinity of the Bliss ranch except work horses and dairy cows, and Sweeney or Johnson makes no attempt to raise any cattle or horses, the only two dairy men who have been in this vicinity for one year or over; while Smith & Smith and Kreider all were raising stek as well as milking cows, and their business was in no ways similar to the busness of a man who is exclusively in the dairy business, who sells his calves from two to four days old and as soon as a cow misses calving and goes dry, sells her to the butcher; is an entirely different way from conducting the dairy business conducted by A. Smith, F. Kreider and K. D. Smith. The Smiths and Kreider prior to the operations of the Washoe*

Smelter handled their young stock and horses, not working, exactly as a farmer would, but only as to their cows, which they were actually milking, was there any difference in care, and the Court will see that the greatest amount of deaths was among the young stock and horses not used as work horses, and that the per cent of death among the milk cows, or cows actually being fed and milked, were small.

But a cow that has been used in a dairy and turned on the pasture, during periods when dry, is always classed and called a *milch cow*, whether in milk at the time or not. See Angus Smith's testimony during the time of his heaviest losses in 1902. He states his cows that he was milking did better *than the other stock*.

Defendants state that they have shown by every specie of satisfactory, clear and convincing proof, that an injury to the Bliss ranch or the stock thereon has been caused by the Defendants.

This the Complainant denies. *There has not been a witness on the stand who has not testified to the lessened value of the Bliss ranch, and if the Defendants were not poisoning this ranch by their smelter fumes, why not show by chemical analysis that it was not there? But they fail to dispute the chemical analysis of Swain and Harkins, which show at times enormous quantities of arsenic on the grasses on this ranch. They fail to slaughter any of the animals pastured on this ranch and show they are not ingesting arsenic, but do attempt to show by Blankenship, Smith and Traphagen every conceivable cause of injury to this ranch except smoke.*

But the fact stares them in the face that alkali, fox-tail, fungi, cold, land, lack of water, too much water, or all

the natural causes which the men allege cause the injury, must have existed long prior to the operation of this smelter, and can in no way have caused the lessening of crops, and sickness and death of stock on this ranch.

Traphagen's Defts. Wit., S 02 tests on this ranch show the greatest amount of anywhere in the vicinity, and as S 02 is known to destroy and stunt vegetation, and as the Doctor finds forty times as much in the air of the Bliss ranch as will cause damage, is it not very plain he has been overlooking the main cause of the damage to the vegetation on the Bliss ranch? The S 02 and the main issue in this case, *arsenic*, entirely overlooked; but Professor Elrod, Comp. Wit., states the Bliss ranch is being damaged by the smelter fumes. Professor Jones, Comp. Wit., as well. Both of these men are practical botanists.

But the strongest proof that they are damaging these farms is the admission of the defendants themselves. In 1902 they paid damages to the farmers of the valley. John Gillie, superintendent of their mines, states the claims of the farmers were *investigated* and found just, and were paid. Mr. Gillie states they are emitting into the air at Anaconda in 1905 *more SO₂ than in 1902, and as they emit more SO₂ they emit more arsenic. This, coupled with all the witnesses who state the sore nose is the same in 1904-5-6 as in 1902.* The farmers and all the veterinarians who have testified in the case who were in the valley in 1902 state the effects and *symptoms* are the same as in 1902.

Does this not refute all the sophistry of the defendants' witnesses as to bugs, alkali, foxtail, frost and every conceivable cause, except the true one, *Smelter Smoke?*

GENERAL SICKNESS.

Defendants argue that no evidence of the animals showing any abnormal conditions in the Deer Lodge Valley is too absurd to take up, and as to Dr. Salmon's statement (page 20022, Vol. 57), as quoted by defendants, *applies to the conditions of the internal organs, as he states some of the best appearing ones show the worst injury internally.*

Defendants argue as to animal losses there has been no general sickness.

As to being no general sickness, we give the names here of some of the men who have testified to the general sickness among their stock, as well as to the deaths since 1902-1903:

W. H. Allen	Dr. Faunt
J. O. Allen,	Daniel Griffith
Soren R. Beck	John Hamner
John Bielenberg	W. W. Harper
N. J. Bielenberg	Henry Hoffman
John Bohn	Byron Howells
Frank Callan	George Jacques
Dennis Callan	Chris Jergenson
Dr. A. H. Cheney	Joseph Johns
J. Collins, Stock Inspector	Chas. B. Jones
Patrick Cudahy	Dr. M. E. Knowles, S. Vet.
George Cummock	Conrad Kohrs
Eli Desourdi	Frank Kreiter
Mrs. Eliza Elliott	Patrick Lappin
W. T. Elliott	Nicholas Liffring
Wm. M. Evans	John Martin
Morgan Evans	John W. Mitchell

Wm. Evans	B. F. Notestine
Bart Para	Jas. E. Waite
George Parrott	Ed D. Wolf
Wm. Parrott	Dr. D. E. Salmon
Harry J. Quinlan	Frank Bigras
John Quinlan	Evan Jones
Joseph Rodgers	Lewis Jones
Jerry Ryan,	Ralph Richardson
John Schultz	John Molinak
Joseph Silver	John Marlock
Angus Smith	Peter Staton
K. D. Smith	Jos. Jacobson
Eph. Staffanson	W. P. Roberts
Joe Staffanson	C. E. Schwend
W. C. Staton	Alfred Perkins
Wm. F. Stephens	W. H. Staffenson
Frank Threlkeld	Dr. E. T. Davidson
	Dr. Robert Formad

CROP CONDITIONS.

Defendants speak of the average of crops given by the Department of Agriculture in 1899 as follows:

Wheat, 27-45 acre.

Oats, 31-5 acre.

Cultivated grasses, 1 1-3 tons.

Alfalfa, 2 1-2.

Wild Hay, 1 1-6.

Defendants give Byron Howells' estimate of yield of wild hay at from 1 to 1½ tons to the acre.

This answer applies to the period *before the smoke trouble.*

Byron Howells states on page 1017, Vol. 3, he has sixty acres of hay land. "I last cut this hay land last in 1903." Vol. 3, 1018: "*Jenderson cut it in 1904; got about thirty tons, or one-half ton to the acre. There has been no ton or ton and a quarter cut on this land since 1904. It was not cut at all in 1905.*" Mr. Howells' testimony shows a decrease from the normal of from one-half to two-thirds.

Defendants give Notestine an average of $1\frac{1}{4}$ to $1\frac{1}{2}$ tons wild hay to the acre, but on page 2866, Vol. 9, he states his crop is fifty tons short in 1905.

Defendants give George Jacques' average of wild hay before smoke $1\frac{1}{4}$ tons to the acre.

Page 2807, Vol. 9, Jacques states his wild hay crop in 1905 was poor; did not turn out as it used to.

Page 2808, Vol. 9: "There was one 80 acres of wild hay *did not cut at all.*"

Defendants give Parrott's average (page 3197, Vol. 9) before the smoke at one ton to the acre, *but* he states on page 3160, Vol. 9, "Cut about 200 tons on 160 acres. In 1902 cut 125 tons.

In 1903 and 1904 cut 100 tons.

Page 3161-2, Vol. 9, George Parrott states positively land is decreasing in yield since 1902.

Defendants give Wm. F. Stevens' average of wild hay to the acre as one ton (page 3247, Vol. 9) prior to the smoke on *his ranch*.

Stevens states his hay *is one-third less than prior to the operation of the Washoe Smelter.* (V. 9, 3223.)

Pages 3248-9, Vol. 9, states that over a ton to the acre, or 110 tons on 100 acres, was about the usual crop prior to the operations of the Washoe Smelter. Can only give the

measurement of one year prior to 1902, and that is 1898, but states as above that it was about the average.

Defendants give Dan James or Bliss ranch under a ton, or about 140 tons for 160 acres. (V. 11, 4268.)

Page 4267, Vol. 11, Dan James gives the acreage of meadow on this ranch from 160 to 175. Angus Smith states on page 642, Vol. 2, he cut the hay on the Bliss or James ranch in 1899. *Paid for 170 tons. Paid for the same amount in 1900 and 1901, or the third year got fully as much as the first year, showing that Mr. James got paid for three years in succession for thirty tons of hay a year more than he swears was an average crop.* This was what it produced before 1902. *Since 1902 it decreased in 1904 to eighty-five tons. In 1905 only forty tons cut; in 1906 no hay cut.*

The figures given by the above men as the average of their ranches on wild hay give about the same yield as the Government Bulletin of 1899 (only three years before the smelter started), and are given by defendants in such a way as to infer it is the average *at the present time*, but we have shown by the testimony of every witness they have mentioned a great decrease from what they gave as an average yield prior to the smoke trouble, and this decrease in yield has only been noticeable since the smoke trouble.

The Court can readily see by reading their brief in regard to the above that it is a misleading statement and one tending to mislead the Court.

We will give the Court a few more cases of decrease in the wild hay crops since 1902:

H. J. Quinlan (V. 7, 2744).

John Quinlan (V. 10, 3646).

Bart Para (V. 3, 1084-1127).

Frank Threlkeld (V. 3, 972).

Harvey Showers (V. 18, 6795-6804).

E. Evans (V. 57, 21395).

N. A. Liffiring (V. 9, 3286-7-8).

Notestine (V. 8, 2835).

Evans (V. 9, 3474).

Bielenberg (V. 54, 21502).

Elliott (V. 55, 21773).

Quinlan (V. 7, 2654).

Roberts (V. 9, 3401).

Bielenberg (V. 54, 21537).

W. C. Staton (V. 16, 6273).

The Court will see that every man who owns a wild hay ranch has testified *to the great decrease in yield, lighter in weight, and to the decrease in feeding value*, and the statement of defendants is absolutely disputed by every witness who testified on these lines. Of the witnesses for defense who owned or leased wild hay ranches *only one testified to the usual yield, Mr. Jessen, a brother-in-law of Jessie Miller.*

Defendants give Liffiring's (page 3319, Vol. 9) alfalfa as two tons to the acre.

Page 3319, Vol. 9, this statement of Liffiring's as to two tons to the acre is *for the first cutting* and not for the entire yield for the year. Alfalfa is cut twice a year always in the Deer Lodge Valley, and as shown by Liffiring (page 3319, Vol. 9) sometimes they cut three crops, and on page 3319, Vol. 9:

“Q. Coming back to what is ordinarily had, how much

do you generally expect an average acre of ground, as you have got, to yield on the first cut?

A. Well, it ought to yield three tons to the acre."

Liffering, page 3320, Vol. 9: "People, our neighbors, have raised as high as six tons to the acre in two cuttings."

The Court will note that these men are testifying to *what was the yield prior to the smoke period.*

Liffering, page 3286, Vol. 9: In 1902 cut seventy-five tons of wild hay and seventy-five tons of alfalfa from twenty-five acres.

Page 3286, Vol. 9: At the present time, February, 1906 (or speaking of the crop of 1905), "*I have more ground in alfalfa, sixty-five acres, and the same wild hay that we used to have. I had this year twenty-five tons of wild hay and 115 tons of alfalfa.*"

Here we see again the defendants are not giving all the facts when they state Liffering's average of alfalfa to the acre at two tons, but Liffering states under normal conditions on such land as he has he should get *three tons* to the acre the first cutting, *and not, as defendants have him quoted, as two tons for the scason.*

See the great decrease in Liffering hay. The wild hay decreased two-thirds in yield from 1902 to 1905. Alfalfa went three tons to the acre, or seventy-five tons cut in 1902 from twenty-five acres; while in 1905, from sixty-five acres cut 115 tons, or about 1¾ tons to the acre; a decrease in the alfalfa per acre of 1¼ tons, showing an immense decrease in hay, both tame and wild hay.

Defendants give W. C. Staton, page 6317, Vol. 16, alfalfa 3½ tons, oats 35 bushels.

Page 6317, Vol. 16: This average of oats given by Staton *was for the period prior to 1902, an average for the entire Deer Lodge Valley, year in and year out, and is for average land, and states that the ground he has had in grain for the last few years had been cultivated in garden land and potatoes, and this land would go forty to fifty bushels at a very low estimate.*

“And the decreased yield that I spoke of (meaning on his direct examination) was from this class of land, all except about fourteen acres.”

Page 6321, Vol. 16: “In 1903-4 my grain *only went nine and one-half bushels one year and eleven bushels the other, and I quit raising grain in 1905.*”

Here we see Staton gives the general average *for the entire valley on oats at thirty-five bushels to the acre*, but states that on the class of land he was raising grain on at the time, and prior to the operation of the Washoe Smelter, it went *from forty to fifty bushels at a low average*, and states in 1902 the Company *paid him damage on his grain crop*, and in 1903 and 1904 one year the grain yielded nine and one-half and the other eleven bushels to the acre, or an average of about ten bushels to the acre a year, *where prior to 1902 this same class of land yielded from forty to fifty bushels; and Staton's testimony is not disputed in this record as to the production of his ranch prior to or after the operation of the smelter.*

Here again we see defendants do not give *all the facts*, but state Staton's testimony shows a yield of thirty-five bushels to the acre, while his testimony shows the yield on his ranch under smoke conditions ten bushels to the acre, *or a loss for the class of land farmed of over three-fourths.*

On page 6317, Vol. 16, defendants state Staton gives yield of alfalfa as three and one-half tons to the acre.

Page 6018 Staton states that prior to the erection of the Washoe Smelter his timothy and clover would average two tons to the acre, and on this page states he had had little experience with alfalfa on *his ranch*, as he just began to raise it about the time the smelter started.

Page 6019, Vol. 15, Staton uses his lower ranch as a basis, which is all meadow. States cut 1.44 tons to the acre in 1905, 56-100 of a ton short to the acre, and states that prior to the erection of the Washoe Smelter his meadows cut as much hay as fifteen years ago.

Page 21409, Vol. 54, Staton states his hay crop in 1906 was *fifteen per cent. short over 1905, and in 1905 shows it had decreased over one-half a ton to the acre from 1901 to 1905.* His testimony shows a steady decrease in yield ever since the operation of the Washoe Smelter.

Defendants give Chas. Jones' average, page 3008, Vol. 8, on timothy one to one and one-half tons to the acre, as a fair yield of timothy on an average.

Jones states, page 3008, Vol. 8, that on his upper ranch, or west of Anaconda, prior to 1902 he cut eighteen tons from seven acres, but don't know much about the yield at present, as it has been rented. Record shows *this ranch has been rented from a period antedating the smoke trouble.*

Page 3005, Vol. 8, Jones gives the result of his oat crop yield from 1902 to 1905. *In 1902 lacked one peck of going fifty bushels to the acre.*

Page 3006, Vol. 8: In 1903 decreased ten bushels to the acre, or 40 bushels. In 1904 decreased five to eight bush-

els that year, or 32 bushels. *In 1905 got twenty-two bushels to the acre, showing a steady decrease every year over the preceding year, until in 1905 he got twenty-two bushels, or a decrease of almost three-fifths.*

Jones, on page 21277, Vol. 54, states: "My crops were not as *good in 1906 as in 1905.* I summer plowed the land in 1905. I double disked it in August or September so as to kill all the weeds. I disked it this spring. I double disked it again, harrowed it down and drilled my ground in and marked it off, and leveled the ground down like I usually do. I really did more work on my farm last year than I ever did in my life, and raised the *poorest crop I ever raised in the valley, and I have been there over thirty years.*" (V. 54, 21278.)

These oats went *fifteen bushels to the acre.* Also states his hay crop fell *one-third short over 1905.*

Page 21287, Vol. 54: States hay crop of 1905 200 tons. Hay crop of 1906 115 tons.

Jones' testimony shows the same as all the rest quoted, and shows the average quoted by defendants in their arguments was to the average *before* the operation of the Washoe Smelter, and *not after.*

Defendants quote Kreider, page 3913, Vol. 10, as giving one ton to the acre as an average for timothy.

Kreider states it was an ordinary crop, but on page 3897, Vol. 10, states did not get over a ton to the acre, while *formerly* used to cut *two tons* to the acre.

On page 3898, Vol. 10, *states in 1898 he cut one hundred and fifty tons of hay on the ranch.*

Kreider states on page 3899, Vol. 10, *he had the same*

amount of ground, from seventy-five to eighty acres; only got thirty-five tons of hay of all kinds.

Page 3868, Vol. 10, Kreider states: "Before and up to 1901 I cleared some years as much as one thousand five hundred dollars. At the present time am out of pocket. This condition has existed for the last three years."

(NOTE.—Same story, *prosperous before smoke trouble, now farming at a loss.* Not a witness in the case has disputed the facts as given by Mr. Kreider as to the condition of his ranch.)

Defendants quote Wm. Evans, page 3471, Vol. 9, as to yield of oats at thirty bushels and wheat eighteen to twenty bushels.

This yield is stated by Evans *to be an average for his land prior to the smoke*, not an average for the valley. (V. 9, 3471.)

Page 3469, Vol. 9, Evans states that from thirty acres in 1904 (or, as the question is put, "year before last," he is testifying in February, 1906, which would fix the time at 1904), from twenty-five acres of oats and five acres of wheat only got one hundred and twenty-five bushels, *about four bushels per acre.*

Evans, on page 3474, Vol. 9, states that prior to the Washoe Smelter he cut 350 tons of hay.

Page 3478, Vol. 9: "Crops are poorer in my neighborhood than they was five or six years ago."

This man's ranch joins Section 16, *or the Company Farm*, and the above statement doubtless shows *why* the defendants were silent as to the yield of their *Experimental Farm*, as he testifies *crops are getting poorer.*

On page 3501, Vol. 9, Evans states he cut *only two hun-*

dred tons of hay in 1905, showing a decrease in his hay crop of almost one-half, and practically a total loss of grain crop, as he shows he only got about four bushels to the acre in 1904, while prior to 1902 he got about thirty bushels of oats and eighteen to twenty bushels of wheat.

(NOTE.—The Court will please take notice of one significant fact in regard to the culture of grain in this portion of the Deer Lodge Valley: The record shows only three persons have raised grain in this portion of the valley since the smoke trouble, to-wit., W. C. Staton, Wm. Evans and the defendants. What are the results?)

Staton averaged before smoke forty to fifty bushels.

Evans averaged before smoke thirty bushels of oats, 18 to 20 bushels of wheat.

Staton's yield after smoke 10 bushels to acre.

Evans' yield after smoke four bushels to acre.

Defendants oat field of eighty acres cut for hay and only raised about eight or ten tons of straw. Did not thresh it. And the most significant thing of all is that these men, including the defendants, have all been compelled to quit raising grain in this vicinity, and the record will show that the defendants, or their tenants, have not threshed a bushel of grain in the years of 1904, 1905 or 1906; and the record will show they have planted it, but all cut it for hay. Why is it not reasonable to suppose that the yield was very poor? If they could have produced large crops of grain on their ranches, would not they have shown it? Most assuredly they would. By their failure to thresh their grain they show the farmers' testimony as to the reduced yield is true.

Defendants quote Record, 4358, Vol. 11, W. T. Elliott,

as giving the average for oats at thirty to thirty-five bushels, wheat thirty to thirty-five bushels.

On page 4331, Vol. 11, Elliott states *in his vicinity prior to the smoke grain went from forty to forty-five bushels to the acre; since the smoke from twenty to twenty-five bushels.*

(NOTE.—Showing a decrease of about 50 per cent.)

Page 4354, Vol. 11, Elliott states he had about twenty acres in grain; got 510 bushels, or about 25 bushels to the acre. Mr. Elliott states that he should have had from 35 to 40 bushels to the acre, as this crop was planted on potato land, and always yields more to the acre than other land.

Page 21773, Vol. 55, Elliott states: “Crop not as good in 1906 as in 1905. *Had fifty-three acres in 1906, got 552 bushels—less than ten bushels to the acre. Hay crop in 1906 175 tons short on the same ground.*”

Page 21776, Vol. 55, Mr. Elliott states the ground on which he raised grain in 1906 was summer fallowed in 1905.

On page 21777, Vol. 55, states he fertilized this land.

Now we will give the average grain yield of a few of the farmers defendants have overlooked:

C. E. Jones (V. 14, 5490).

Schwend (V. 9, 3531).

Staffanson (V. 8, 2914).

Staffanson (V. 55, 21742).

John Quinlan (V. 10, 3600).

Kreider (V. 10, 3810).

Jacques (V. 53, 21140).

Quinlan (V. 10, 3600).

Jacques (V. 8, 2799).

Bielenberg (V. 54, 21505).

Mitchell (V. 11, 4193).

Staffanson (V. 8, 2913).

Bielenberg (V. 7, 2687).

And almost every farmer testifying testifies to the great shrinkage in grain crops since the operation of the Washoe Smelter.

Defendants state that the farmers of the valley have gotten fair market prices for their hay and far in excess of the prices realized by the farmers in any other valley in Montana.

The above statements are not true and are not borne out by the record. The record shows that little or no hay has been sold in Anaconda and that only at reduced rates. That the merchants of Anaconda and Butte have refused to buy the hay at any price, even when the farmers were indebted to them. They would not take it to pay their bills. We propose to show here, as shown by the records, the entire purchase of hay from the entire Deer Lodge Valley by the merchants of Anaconda, during the smoke period, and during that time they have not purchased as much hay from the Deer Lodge Valley as was grown on the ranch of W. C. Staton for that period.

Total purchases of W. J. Allen, defendants' witness, the only exclusive hay dealer in Anaconda, show that he has bought in the Deer Lodge Valley, in the last four years, only 321 tons, and 10½ tons of this from Joseph Smith. Was 1903 crop, or year smelter closed. In 1905 only bought twenty-eight tons of hay from the valley for the entire year. Bought a load or two in 1906. Bought 154

tons from Lankin ranch, but had only been able to sell about thirty tons of it in a year.

Page 7202, Vol. 19: Cost of Lankin hay delivered at Anaconda about \$9.85 a ton, and can't sell it. Allen shows he shipped in from outside points *in 1905 fifty cars, or 600 tons; about twice the amount he has bought from the valley in four years.* But in 1903 he paid \$13 a ton for the same class of hay as the Lankin hay to Joseph Smith on track at Willow Creek (seven miles from Anaconda), and it sold well that year. Joseph Smith states his hay was only about one-third grown that year when the smelter closed, and 1903 was the last year Allen bought any hay in this vicinity that he *could sell.* Bought the Lankin hay in 1905, near Smith's ranch, but admits he could not sell it. *Sold 600 tons of outside hay while selling thirty tons of this Larkin hay.* Admits his horses won't eat the valley hay.

Page 11700, Vol. 30: Conynes, defendants' witness' testimony as a whole shows McCallum and Cloutier Mercantile Company only bought \$6,238.95 of hay from *the entire valley in four years, or about 600 tons; an average of 150 tons a year, and most of this hay was bought of the crop of 1903, the year the smelter closed.*

(NOTE.—Here we have the two principal dealers of Anaconda who bought more than all the remainder of the merchants combined, and who have bought less than 1,000 tons in four years. Allow the remainder of the merchants 1,000 ton purchases in the valley in four years, and we have total purchases of hay of 2,000 tons in four years. *Less by 1,200 tons than Elliott's ranch alone produced in the same period; less by 400 tons than Bielenberg's ranch produces for the same period; less by 1,000 tons than Staton's ranch*

produces for the same period; and we have 104 other farmers producing hay to hear from; and still in the face of this they claim the farmers find a ready market for their hay. McCallum & Cloutier Company ship in more hay from outside points in one year, and pay cash for it, than they bought in the valley in four years.

The Court will further see that what hay has been bought in Anaconda is bought *at an average distance of at least ten miles from the smelter. Men close to the works, like Evans, Staton, Para, Showers, Threlkeld and many others, can not sell their hay to the merchants of Anaconda at all since 1903.*)

Defendants quote the prices paid for hay bought outside of the Deer Lodge Valley, paid by Allen, from \$10.80 to \$12.80 on the cars at Anaconda. Within the last four years Mr. Allen may have bought hay at that figure, but the defendants do not show the maximum price paid by Mr. Allen, which has been *as high as \$18 a ton*. Allen could give no specific price for outside hay.

Defendants state John Wenger, defendants' witness, bought hay at Billings for \$5 a ton on the car (pages 11361-11362, Vol. 29), or equivalent to \$8 a ton in Anaconda.

Mr. Wenger swore to this and he possibly might have done so, *but as it costs \$2.25 a ton to bale and \$2 a ton to cut and stack, and taking defendants' lowest price for loading, 75 cents a ton, \$5 a ton, and the farmer has worked for nothing and boarded himself. This price is \$3 a ton under the lowest price in the record for hay loaded on the cars at any point in Montana, and in view of the fact of the statements made by Mr. Wenger to Mr. Clyde Baker, Sheriff of Sanders County, and Mr. Monchan, Stock Inspector for that district, that he would get even with the*

farmers of the valley in this Smoke Case (which statement he denied and was impeached by these two men) little credence should be given to his testimony, and especially in regard to this hay at \$5 a ton loaded on the car. And the record shows only one car and a transaction like the above would not show anything.

Mr. Franzeman's prices on hay in the Gallatin Valley is for *the prices on the ranch and in the stack*, and the Gallatin Valley is a large valley, and some of the ranches are far away from the railroad, but Mr. Franzeman is disputed by Mr. Conyne, defendants' witness, Manager McCallum and Cloutier Mercantile Company show they have paid an average of \$12.02 a ton, all for the years of 1901-4-5-6, on the cars at *loading points in Montana, or \$14.82 f. o. b. Anaconda.*

Defendants quote Howard, defendants' witness, on hay prices as \$4 and \$5 a ton, seven miles from the railroad. He gives the price for one year only, so does not fix a market value except for that year. (V. 29, 11361-2.)

And another point that is taken into consideration in this man's testimony is this, that when a man feeds cattle on a ranch the manure is a valuable product *which remains* on the ranch, and another thing is that when hay is bought to feed on a ranch generally *the entire crop is bought at one time and paid for by measurement, which includes the top and bottom of stacks which are generally not fit for baling and shipping*, while hay delivered in the markets *must all be first-class*. And what the price of hay is in one valley in Montana does not fix the price in another, and has no tendency whatever to show whether the farmers in the Deer Lodge Valley are getting the prices their product

had brought for years prior to 1902. *You destroy the stock industry of Montana, as it has been destroyed in the Deer Lodge Valley, and hay would not be worth cutting in the State of Montana.*

There are several individual ranches in the Deer Lodge Valley which kept more stock *prior to the erection* of the Washoe Smelter than is kept in the entire city of Anaconda, and by the destruction of the stock industry in the Deer Lodge Valley *it has created a surplus of hay which formerly did not exist; which hay, owing to its damaged condition, can not be sold in the Butte market, and very little at Anaconda, as shown by amounts purchased by dealers in Anaconda.*

Mr. Howard only fed cattle in the valley one year, and outside of the cattle fed there for local slaughter was the only bunch fed. *Never fed any before or since, and were fed there for the sole purpose of furnishing testimony in this case. And the Court will also notice that Mr. Howard got as far away from the smelter as possible, and only fed the hay from ranches on which any damages are claimed for about thirty days.*

Pages 3136-7, Vol. 9, and pages 3133-4, Vol. 9, quote John Bielenberg as having bought hay in the valley for \$5 and \$6 a ton. This was where an entire crop was bought and also fed on the ranch. Only did this two years; Bielenberg states would not buy the hay from *the upper valley.*

(NOTE.—The Smoke Zone.)

Page 19517, Vol. 49, quote Mr. Miller as buying hay on the Bliss ranch from \$6 to \$8 a ton prior to 1900.

Page 657, Vol. 2, Angus Smith states in his testimony

that Jesse Miller, defendants' witness, refused to buy *any more hay of him after buying five tons.*

Defendants state that when the farmers of the valley receive \$5 a ton on their ranches for their hay, or \$8 at Anaconda, they are receiving a much better price than farmers in other sections of the state are getting.

This statement is absolutely disproved by the figures of prices paid by Anaconda merchants for outside hay.

And it is shown by a great many farmers that they can not sell their hay at all; and to feed it, it takes twice the amount to sustain stock it formerly did, and then does not sustain them as well. Conyne, Allen, Hurley and Gnose, defendants' witness, show by their testimony that they buy very little hay in the valley.

Allen, defendants' witness, states *that all large consumers of hay in Anaconda ship in their hay.* Mr. Allen's testimony shows that *Mr. Brownell, a liveryman in Anaconda, who owns a ranch in the valley, buys outside hay.* Won't feed hay grown on his own ranch to his horses.

And it is shown in this record beyond dispute that W. C. Staton's ranches produce more hay in one year than all the dealers in Anaconda buy from all sources. *Where is the market, and where are the normal prices?*

Page 5992, Vol. 16, Staton's testimony shows he offered this hay to all the dealers of Anaconda in 1904 and 1905, and they would not buy it *at any price*, and was forced to sell it at auction at *an average of \$¼ a ton.* States he could not sell his 1904 crop, only sold about one hundred tons, and could sell *no more at any price*, and kept it until the fall of 1905, *when it was sold at from two to three dollars and seventy-five cents a ton.* 1905 hay sold from two dol-

lars and seventy-five cents to five dollars and seventy-five cents a ton.

Pages 5990-3, Vol. 16: Staton's testimony shows that prior to 1902 he always had ready sale for his hay at \$10 a ton on the ranch, or \$12 to \$15 in Anaconda. *Staton's testimony stands undisputed in this record.* All the merchants who deal in hay in Anaconda were on the stand for defendants. None of them disputed the facts as testified to by Staton. Both McCallum and Conyne, of the McCallum & Cloutier Company, state *they refused to buy Staton's hay in 1904 and 1905. The evidence of W. C. Staton is that at that time he owed them \$1,000, and offered them hay at their own price to cover the account and they would not take it.*

Angus Smith states this same Company refused his hay to pay an account which he owed, also Byron Howells states they would not take his hay to pay his bill, and several others have testified to the same. Numerous witnesses have testified to the refusal of W. J. Allen to buy their hay.

W. C. Staton testifies that J. B. Gnose refused to buy his hay, and (page 24020, Vol. 61) states Pierson would not buy his hay *at any price, and shipped in hay to feed while living on Staton's ranch.* This was straight timothy hay of 1904 crop. (V. 61, 24021.)

BUTTE DEALERS WHO REFUSED STATON'S HAY.

Beebe refused to buy Staton's hay. (V. 16, 6282.)

Elver refused to buy Staton's hay.

ANACONDA DEALERS WHO REFUSED STATON'S HAY.

McCallum & Cloutier Mercantile Company. (V. 16, 6283.)

Copper City Commercial Company. (V. 16, 6284.)

J. B. Gnose. (V. 16, 6284.)

W. J. Allen. (V. 16, 6285.)

Staton states McCallum stated if people knew they handled smoked hay it would ruin their trade. (V. 16, 6286.)

Wm. J. Evans (V. 8, 3506): "Have sold a little hay this year. Have not sold what I had to sell. *What I have sold I sold at nine dollars a ton to Jesse Miller delivered on the Company ranch. Have offered it, but can't sell it.*

Page 3482, Vol. 8: Wild hay sold for \$8 a ton and tame for \$10 in the stack prior to the Washoe works.

Page 3483, Vol. 8: Market has been very poor since operation of the smelter; price \$6 or \$7 a ton. Sold 1904 crop, or most of it, to Montgomery & Wenger at *eight dollars a ton delivered*; cost \$2 a ton to deliver."

(NOTE.—This hay was fed to cattle that was being slaughtered and only fed a day or so.)

Angus Smith (V. 2, 656): "Paid \$8 a ton in the stack for hay on Bliss ranch in 1898-99-1900.

Page 657, Vol. 2: Sold my hay in 1904 (tame hay) in the stack at \$6.50 a ton. Same class of hay from outside of smoke zone worth \$10.

Page 724, Vol. 2: Offered McCallum & Cloutier my hay at their own price and they would not take it.

Page 726, Vol. 2: Went to most every livery barn in Butte and they would not buy my hay when they found out where it come from."

“W. J. Allen (page 727, Vol. 2), the feedman, refused to buy my hay: J. B. Gnose, Copper City Commercial Company, Dunlap, Purchasing Agent for A. C. M. Company. *Only sold sixteen tons in Anaconda.*” Smith’s testimony shows he cuts two hundred tons.

Page 727, Vol. 2: “*Could not exchange hay for groceries with any business house in town. Would not take it to pay my grocery bills.*”

(NOTE.—Could not dispose of hay at all.)

K. D. Smith (V. 3, 863): Bitter Root hay costs from \$14.50 to \$17 a ton at Anaconda.

Buys Jacobson’s hay for \$10.50 in the barn.

Jacobson’s hay quality better than the Bitter Root hay. *Finer, not so woody*, but the feeding value is not in the valley hay. Has to feed one-third more bran and oats when feeding valley hay.

Mr. Smith shows conclusively a difference of from *four dollars to six dollars and fifty cents a ton less for valley hay of equal or better than Bitter Root hay.*

Page 884, Vol. 3: Sold his hay *for five dollars and six dollars in the stack*, six miles from town, or *from eight dollars and fifty cents to eleven dollars a ton less than outside hay was costing.* See page 863, Vol. 3, a reasonable price for hauling this hay to town would be \$3 a ton, which shows valley hay selling in Anaconda (when sold at all) *five dollars and fifty cents to seven dollars a ton less than outside hay.*

Frank Threlkeld (V. 3, 976): Prior to 1902 used to get \$8 a ton for hay in the stack and from \$12 to \$16 in town.

No market at this time.

Page 978, Vol. 3: The only hay sold lately is about eight tons to Hoagland (page 979, V. 3). Got \$8.50 a ton delivered (Hoagland lives in Anaconda), or \$3.50 a ton less than he had ever sold hay for, and *only could sell* eight tons in Anaconda.

Page 1002, Vol. 3: Could not sell it in Butte. Did not want Deer Lodge Valley hay.

Page 1004, Vol. 3: *Never had any trouble selling hay prior to 1902.*

Byron Howells, Comp. Wit. (Page 998, Vol. 3: "Sold hay last time I cut it for \$5 a ton and did not get paid for it.

Page 999, Vol. 3: People from Anaconda would not buy hay grown that close to the smelter.

Page 1044, Vol. 3: McCallum & Cloutier Company would not buy my hay to pay a bill.

Page 1057, Vol. 3: Hay on the Bliss ranch was always salable hay." (Prior to 1902.)

Bart Para, Comp. Wit. (page 1086, V. 3): "Sold some of my hay *for four dollars a ton*. I tried to sell my hay and could not.

Page 1087, Vol. 3: *Prior to the smoke I sold my hay from eleven dollars to fourteen dollars a ton in Anaconda.*

Page 1086: *W. J. Allen, Gerard at Warm Springs, McCallum and Cloutier, Falk, the butcher, and Mallory would not buy my hay; had sold to some of these men prior to 1902.*

Page 1134: My timothy hay *in the stack* is worth *nine or ten dollars a ton, and I will take four dollars for it.*"

Lavina J. Hensley, Comp. Wit. (page 1142, Vol. 3): "Prior to operation of the Washoe Smelter we sold all the

hay we did not use ourselves and *never had any trouble.*

Page 1187, Vol. 4: Never had any hay left over prior to 1902.

Page 1149, Vol. 4: No hay cut on this ranch in 1903. Could not rent the ranch in 1903.

Page 1142, Vol. 4: This ranch has cut as high as 420 tons.

Page 1149, Vol. 4: In 1904 got \$400 a year rent for nine hundred acres.

Page 1150, Vol. 4: In 1905 got \$160 rent for nine hundred acres.

Page 1143, Vol. 4: This ranch rented for \$1,000 a year prior to Washoe Smelters.”

Mrs. Hensley states this ranch was settled in 1869 *and every year up to the operation of the Washoe Smelter all hay was sold that was not used on the ranch, and there was no trouble to dispose of it.*

Page 1154, Vol. 3: “Have sold hundreds of tons of hay from this ranch at from \$35 to \$40 a ton during life of my husband. (Died in 1893.)

Page 1157, Vol. 3: When we lived on the ranch we were all prosperous. Got good prices for everything. *None of my neighbors were poor. Sold everything they raised at good prices.*

Page 1180, Vol. 4: Defendant Company paid me *four dollars a ton damage for the hay that was not cut in 1902.* (Wild hay.)

Hay was worth more than \$7 a ton in the stack.”

Page 1183, Vol. 4: Here we think clearly shows the condition of the hay market for the Deer Lodge Valley hay. Here is a ranch which has cut as high as 420 tons of

hay to ranch in a season; been cut every year from 1869; never was any hay left unfed or unsold prior to 1902. The defendants paid for the uncut portion of the crop in 1902 at \$4 a ton, or clearly showing this hay was worth standing uncut \$4 a ton. Say the ranch will only cut 320 tons, or a ton to the acre. Crop uncut on this ranch worth \$1,280 standing in the field. But in 1905 could only get \$160 rent for it, including 580 acres of pasture land. Does the Court believe in the face of these facts (which are undisputed by a single witness in this case) that the prices for hay in Butte and Anaconda for valley hay are normal and the demand for it good? What does this witness' testimony show?

(NOTE.—That the defendants in 1902 paid *four dollars a ton damage on uncut hay* on this ranch, fixing the value at that time. *Now she can only obtain \$160 in rent for the ranch (admitting the pasture of 580 acres valueless), or at the rate of fifty cents a ton for the uncut hay, a decrease of three dollars and fifty cents a ton, or a decrease of seventy-five per cent. in price.* This is one of the ranches close to the smelter, three and one-half miles.)

Wm. F. Stephens, Comp. Wit. (page 3239, V. 9: "Can't produce the crops *nor get the income* that I did prior to 1902.")

W. P. Roberts (page 3430, V. 9): "*Could not sell my hay.*"

Wm. Evans (page 3482, Vol. 9): "Price of hay prior to Washoe Smelter \$8 for wild, \$10 for tame hay in the stack.

Page 3483, Vol. 9: Since the smelter \$6 to \$7, and market poor."

C. E. Schwend (page 3555, Vol. 9) : Testifying in February, 1906 (seven months after the alfalfa harvest) : "*Have only sold nine tons. Got \$9.50 a ton delivered in Anaconda. For two tons got \$10 in trade.*"

As shown on page 3556, Vol. 9, this man cut about 115 tons of alfalfa. *Has only sold nine tons in seven months.* Where is the demand for the hay in the markets of Butte and Anaconda for Valley Hay.

John Quinlan (page 3593, Vol. 10) : *States sold only one car of hay.*

Page 3600, Vol. 10: Prices better prior to 1902 than at present.

Page 3579, Vol. 10: *Owms three sections of land, or 1,860 acres.*

John Martin (page 3716, Vol. 10) : "My principal crop is clover and timothy hay.

Page 3731, Vol. 10: Prior to the Washoe Smelter prices for timothy and clover hay *in Anaconda were sixteen to seventeen dollars a ton.*

Page 3733, Vol. 10: What I sold up at Race Track I got \$17 a ton for.

Page 3733, Vol. 10: Do not find a ready sale for my hay at this time. What I have sold I got *eight or nine dollars for from Mr. Jones at Danielsville.* Do not find ready sale for it. *Have fifty or sixty tons left of 1904 and 1905 crop.*

Page 3753, Vol. 10: Have been trying to sell my hay ever since last fall. *Tried to sell to McCallum and Cloutier. They used to call it good hay—but now they will tell you they don't want valley hay."*

Wm. H. Allen (page 3780, Vol. 10): Allen Ranch is about one mile from smelter (see map).

“Used to get \$10 a ton for my hay on the ranch.

I have not been able to sell it.

Do not feed it to my own stock.

Page 3782, Vol. 10: Left my ranch and went to work for wages because I could do better.”

(NOTE.—Here again we see a ranch close to the smelter whose hay is unsaleable; can't be sold; while prior to the smelter got \$10 a ton for hay on ranch. *Not a decrease in price of hay, but an entire loss on this ranch.*)

Frank Kreider, Comp. Wit. (page 3863, V. 10): “Can't sell my hay in Butte. I have some thirty-five tons left, the best of it. I tried to sell it in Butte, but they said they would lose their customers if they bought that hay.”

W. C. Staton, Comp. Wit. (page 5990, Vol. 16): Hay never varied more than \$2 a ton from 1888 to 1903. Hay worth in Anaconda from \$12 to \$15 a ton.

Never had any hay left on the first of March (unless reserved on contract).

In 1902 got \$14 a ton prior to the people beginning to kick on the hay.

Sold the balance of the crop to the Anaconda Company from \$10 to \$7 a ton in the stack. Defendants paid for hay and took it except \$4 a ton damage paid to fifty tons.

In 1903, year the smelter closed, got \$13 and \$14 a ton on track at Willow Creek.

In 1904 sold about one hundred tons at \$14 a ton. The remainder I could *not sell at all*.

Compelled to sell the remainder of that year's crop, in-

cluding the 1905 crop, from \$2 to \$5.25 a ton.

Page 5993: Hay was worth \$10 a ton on the ranch if not damaged.

The same class of hay worth in Anaconda from \$12 to \$12.80 a ton (*in car lots*). Freight to Anaconda, 80 cents a ton. .

This hay consists of timothy, clover, red top and alfalfa, and about twenty-five tons of *mixed wild* hay.

Page 6028, Vol. 16: Staton has 3,288 acres of land in the valley. (Average distance from smelter about three and one-half miles.)

Page 6029, Vol. 16: Has 560 acres under cultivation.

Page 6075, Vol. 16: Had to sell 1,100 tons of hay at auction, as he could not sell it any other way.

(NOTE.—Average price about \$4 a ton.)

Page 6222, Vol. 16: Cheapest Dillon hay ever laid down in Anaconda in the last three years was \$12.80, and as high as \$22 a ton.

Page 21414, Vol. 16: We don't call alfalfa "*hay*"—when we speak of alfalfa we say *alfalfa*.

Page 6234, Vol. 16: Baled 120 tons of 1903 hay. Took a year to sell it. Sold for \$8 to \$10 a ton in Anaconda. (Retail.)

Page 6263, Vol. 16: *Contracted eight tons to John Wenger, defendants' witness, at the slaughter house (in 1905—1904 crop) for eight dollars a ton delivered. Montgomery, defendants' witness (Wenger's partner), stopped him; told him he would not give fifty cents a ton for it. Took two loads.*

Page 6264, Vol. 16: *Had been selling him (Montgomery), defendants' witness, the same class of hay prior to*

the smoke for twelve dollars and thirteen dollars a ton.

Page 6266, Vol. 16: Owed James Stagg \$100. Bought one load, would take no more. Stagg was buying hay all the time. This was 1904.

Page 6392, Vol. 16: *Pearson in 1905 had hay of his own stacked on the Evans' ranch, which adjoins Staton's. Would not feed it. Pearson shipped in hay to feed."*

Page 21410, Vol. 54: McCallum stated he could not sell his hay in Anaconda (1906 crop). Was bought for a contractor on the Milwaukee road.

Page 21418, Vol. 54: "The best price he could get for my timothy hay in 1906 crop was \$9 a ton, delivered on the car."

Page 21429, Vol. 54: *Hay unusually high in 1906.*

Page 21431, Vol. 54: Staton states does not feed his own hay to valuable stock.

Here we have a detailed history of the demand for hay from the valley before and since the smelter trouble.

Page 6807, Vol. 17: *Hay cut in 1903 on Daniel James' Estate ranch, part of it there yet (or in 1906).*

Page 6808, Vol. 17: *Only five tons of 1904 sold at five dollars a ton. (Rest there yet.)*

Page 6810, Vol. 17: Never sold this hay for less than \$6 a ton prior to the operation of new works.

N. Liffering, Comp. Wit. (pages 3348-9, Vol. 9): States has alfalfa hay on the ranch (February, 1906) of 1905 crop. Thirty tons; will sell for \$5.25 a ton.

Wm. Evans, Comp. Wit. (page 3951, Vol. 9): William Evans has sold no hay of 1905 crop. Has tried to sell it. Allen, the feed man, at Anaconda, would not buy it, and others.

Morgan Evans (page 3991, Vol. 9: *Have sold none of 1905 crop. Has tried to sell to men he formerly sold to. Would not buy it. Stated they were shipping in their hay.*

Page 3992, Vol. 9: "Cheapest I ever sold hay was \$11 a ton delivered. Used to get \$12 to \$15 a ton.

Page 3998, Vol. 9: Can't ship hay from outside points as cheap as it can be bought in the valley."

John W. Mitchell (page 4186, Vol. 10): Ranch on Mill Creek.

Shippers of beef cattle from the Big Hole. Won't feed valley hay to beef cattle; they are shipping from Anaconda.

Page 4215, Vol. 10: *Only raised seven and one-half tons in 1905 from thirty acres, so had no hay to sell. (Same land in 1901 cut forty-five tons.)*

Henry Hoffman, Comp. Wit. (page 4151, Vol. 10): Ranch at Race Track Station.

"Sold my hay in stack (1905 crop) for five dollars a ton.

Page 4152, Vol. 10: *Prior to 1902 never less than seven dollars or seven dollars and fifty cents a ton.*

This was mostly tame hay (V. 159). Have only fifty acres of mixed wild hay on the ranch."

(NOTE.—This ranch, farthest ranch northeast and last one in the Farmer Association.)

Joseph Silver, Comp. Wit. (page 4256, Vol. 11): Could not sell valley hay in Butte. Sold some and had to take it back; they would not pay for it. Said they would not use it.

Page 4256, Vol. 11: Because it *was from Deer Lodge Valley.*

Harry J. Quinlan (page 3662, Vol. 6): "Did not have a ready market for our hay in Butte and Anaconda in 1904 and 1905. Sold about two cars to McCallum & Cloutier.

Page 2663, Vol. 6: Tame hay used to bring from \$13 to \$76 a ton on the markets of Butte and Anaconda. Since 1902 have had no luck shipping hay to Butte and Anaconda markets."

Sold his timothy and clover for five dollars a ton in 1905.

George Jacques (page 2772, Vol. 6): Had a ready market for my hay prior to 1902. *Cut from 350 to 400 tons. Have quite a lot at the present time (February, 1906). Have two stacks left from 1904 and about all the hay left from 1905.*

Tried to sell it in Butte. Would not buy my hay; said it was too close to the smelter.

Page 2774, Vol. 6: *Wanted alfalfa in Butte badly at the time, but would not handle hay from Deer Lodge Valley.*

Notestine, Comp. Wit. (page 2843, Vol. 6): Prior to the smoke had a ready market for my hay. Did not have to haul it; sold it right at home. Got good, fair prices.

Page 2855, Vol. 8: Since the smoke trouble can not sell hay at any price. It has no value at all, for the simple reason that you can not raise stock in connection with it. All of this must go together to make it profitable.

E. Staffanson (page 2934, Vol. 8): Sold some alfalfa hay to a man in Anaconda for \$4.50 a ton.

Tried to sell to Allen and J. B. Gnose (hay dealers) from the Daniel James' ranch.

Page 2935, Vol. 8: Would not buy (was not sold at all). They said they did not want any smoked hay.

(NOTE.—These ranches are from three to five miles from the smelter. The hay Mr. Staffanson speaks of on the Daniel James Estate place, *Morgan Johnson*, defendants' witness, *a milkman*, states four dollars a ton was too high for it. Mr. Staffanson, as shown by the testimony, has removed from the Deer Lodge Valley, and his and his wife's ranches are abandoned.)

Chas. B. Jones, Comp. Wit. (page 3019, Vol. 8): Sells some hay. Gets \$5 a ton for it on the ranch.

George Parrótt (page 3196, Vol. 8): Has sold hay in Butte for \$30 a ton.

Prior to Washoe Smelter received \$12 and \$12.50 a ton in Anaconda.

Page 3153, Vol. 8: Lived in Deer Lodge Valley since 1866.

Page 3176, Vol. 8: Does not find a ready market for hay in Anaconda since 1902.

They find fault with it on account of the smoke.

Liverymen in Anaconda won't buy it.

Page 3176-7-3195, Vol. 8: "Wild hay *on my ranch was worth ten dollars a ton prior to 1902.*"

(NOTE.—There are several liverymen in Anaconda. Is it not strange the defense *would introduce* the testimony of so *many men* to show the feeding of valley hay in Anaconda and did not produce *one large consumer* of hay in the whole town as a witness? The liverymen who do business in Anaconda, to-wit., Brownell & Reece, W. C. Haynes and John French (numbers of the farmers have testified to the refusal of these liverymen to buy hay, but ship in their hay), none of these *liverymen* were put on the stand by defense to disprove the farmers' testimony. They only

introduced men who fed a load from the valley occasionally.)

Pat Lappin, Comp. Wit. (page 21182, Vol. 54): Sold his hay in Anaconda for \$12 a ton; all tame hay, timothy and clover.

(NOTE.—Here we would like to call the Court's attention to the testimony of men who live west of Anaconda as to the market and prices received for their hay, where the smoke seldom gets up as far as they live. See Mr. Parker's testimony.)

Parker, Def.'t Wit. (page 8169, Vol. 21): "*It misses my ranch when it does come up there. It goes to the south.*"

Very little smoke at my place.

Page 8170, Vol. 21: Goes mostly down the Deer Lodge Valley.

Page 8171, Vol. 21: Notice smoke on *Levengood's ranch fifty days* where it is not on my place *once.*"

(NOTE.—This witness for the defense shows the smoke comes there but seldom.)

(NOTE.—Mr. Parker's ranch is the last ranch west of Anaconda, up Warm Springs Creek, where any farming is done and not claimed by the complainants to be seriously injured.

Note what he says about the market for his hay and the demand for the same:)

Page 8156, Vol. 21: "*In 1904 sold all my hay in Anaconda at fifteen dollars a ton.*"

Page 8161, Vol. 21: "*In 1905 sold all my 1906 crop for eighteen dollars a ton in Anaconda. Sold this hay loose.*" This hay is timothy and clover, not *straight timothy*, the

defense tries to lay so much *stress on*, but timothy and clover, as almost every man in the valley raises.

Benninger, Deft.'s Wit. (page 7952, Vol. 20): Benninger paid *ten dollars a ton for alfalfa in 1903 grown six miles west of Anaconda, near Parkers.*

Page 79531, Vol. 20: Bought twenty tons of alfalfa in the stack from the Emmon's ranch in 1903. (This ranch is in the valley, about the same distance from Anaconda.) *Paid one hundred and twenty-five dollars, or about six dollars a ton.*

Here we see the same class of hay, *alfalfa*, both about the same distance from Anaconda, where the valley hay sells for \$4 a ton less than hay west of town.

Page 7965, Vol. 20: Paid Stuckey \$10 a ton for alfalfa in 1904.

Page 8031, Vol. 21: Paid Stuckey \$12 a ton for hay on the ranch in 1905.

Page 8035, Vol. 21: Sold some of Staton's hay in Anaconda for \$10 and \$11, or \$1 a ton less than he paid Stuckey for hay in the stack.

Staton's and Stuckey's ranch are about the same distance from Anaconda (see map).

Why should hay on Stuckey's ranch sell for \$1 to \$2 a ton more in the *stack* than could be got *for Staton's delivered?*

Page 8035, Vol. 21: Benninger states he was acquainted with the Staton ranch prior to the smoke and the land from which the hay was cut. That he bought of Staton, and that at that time the hay never sold *for less than twelve dollars a ton in Anaconda*, and could be delivered at Anaconda for \$3 a ton, *leaving this hay, according to defendants'*

own witness, worth nine dollars a ton in the stack prior to 1902, while he paid four dollars and seventy-five cents (for the same class of hay and cut from the same land) in 1905. Defendants show here by their own witness a depreciation of about fifty per cent. in the price of hay since the smoke period, and Staton's testimony is substantiated by witness for the defense.

This witness further shows that hay in the valley, take the Stuckey alfalfa and valley alfalfa, a difference in price in favor of Stuckey hay, of what defendants claim is a fair price for hay, or about \$5 a ton.

The Court will further notice that a number of the witnesses who testified in Anaconda to the feeding of valley hay, most of them bought hay west of town, or if in the valley, at a distance from the smelter. (V. 20, 7902.)

We believe that the facts, and this testimony as shown, completely puts beyond a question of a doubt that the farmers have a good market for their hay and receive the same price for their product as hays from outside the Smoke Zone are selling for, and completely refutes Defendants' statements as to a normal market for the hay of the valley.

Defendants states Mrs. Hensley was on the stand, whose ranch is immediately east of the smelter, and says she gave no crop loss since 1903 and no animal loss since 1903.

What does Mrs. Hensley's testimony show? That in 1901 she had her ranch leased to Bowman at \$700 a year. That Bowman did not keep it up as he should, and she took it away from him and went on the ranch herself, in 1902, which year the smoke first injured the ranch; which

year the Defendants paid her \$2,180 for damage to three horses and her hay crop, or a conservative estimate in damage to her hay of \$1,800. 1902 accounted for.

Could not rent the ranch in 1903. "My horses had died and under the circumstances I did not think I could afford to stock up again. I could get no one to cut it in 1903. I got nothing for the other ranch either." (V. 3, 1149.)

"I got \$400 in 1904 in rent for both ranches.

"In 1905 got \$160 in rent for both ranches." (V. 3, 1149.)

It is true Mrs. Hensley does not give the decrease in yield, but what does she give? A decrease in the rental value from \$700 a year for one ranch in 1901 to \$160 in 1905 for 900 acres of land. (V.V, 1150.)

Defendants state she gives no stock since 1903.

True, and for a very good reason. *Horses had died, and she did not have any stock to die.* (V. 3, 1149.)

But Pat Sweeney states on page 8423, V. 22, he had two horses running on the Hensley ranch in the winter of 1904-5. Had sore noses and one died on the K. D. Smith ranch in 1905, the other one is in Missoula. This is the only stock shown to have remained on the Hensley ranch for any time. A few cattle were fed there that were brought into the valley and killed for beef shortly after coming there.

This clearly disproves of all of the statements as to no damage to the Hensley ranch and crops since 1903. Mr. Larivee, the tenant on this ranch, was not produced by Defense, and could have been if Mrs. Hensley's testimony was untrue.

Defendants states Cummock's ranch troubled with alkali and fox-tail. Got his banner crop of 365 tons on less than eighty acres. (V. 7, 2563.)

Cummock states this 365 tons was cut in 1904.

In 1905 the same land cut 145 tons less than in 1904. (V. V, 2559.)

GEORGE JACQUES, Comp. Wit.:

Defendants quote George Jacques as cutting in 1905, 360 to 400 tons of hay, about the same as he cut before the Smoke period. (V. 8, 2772.)

Mr. Jacques does not state any such thing as quoted by Defendants, and the above is a clear misstatement of the record.

Mr. Jacques states that *prior to the smoke period* he cut 350 to 400 tons of hay. *Does prior to smoke mean 1905? Most assuredly not.*

Mr. Jacques states on this page, 2772, V. 8, that he has no ready sale for his hay. Has two stacks of 1904 crop left and has about all of his 1905 crop left, and that *prior to the smoke period*, always sold all surplus hay readily.

Quotes Mr. Jacques (V. 8, 2267-8) and claims this is one and one-half times the standard. Had in about 15 or 16 acres.

In regard to this ground he had in wheat, Jacques states it ought to have been better. The leaves were burned brown. It was dead on the stalk. (V. 8, 2813.)

This ground had been in clover for six years. Apart of this wheat ground was potato land, which had been manured for six years. (V. 8, 2169.)

Here Defendants take sixteen acres of ground that has received extra attention and manure and try to show by

this *sixteen acres of wheat alone* that this man's grain crops are over the normal. *Is this fair?* They failed to give what Mr. Jacques says on page 2768, V. 7, "Oats ranged from fifty to seventy bushels to the acre on this ranch *prior to the smoke. Since the smoke would not go over twenty-five bushels.*"

Quote Jacques (2896, V. 8), as raising 252 tons of alfalfa on sixty acres.

These are supposed measurements of the Company and nothing in the record to show they were correct, but were used for the purpose of cross examination and not a single measurement of hay was put in by the Defense.

"Don't think I had that much hay." (V. 8, 2806.)

States thinks he has more land than sixty acres, and as Defendants have not proven 252 tons cut on Mr. Jacques' ranch from sixty acres, Mr. Jacques' statement as to less hay cut and more land from which it was cut, must stand and renders Defendants' statement worthless, as it proves or disproves *nothing*.

Mr. Jacques, page 2806, V. 8, states positively this land *is not yielding as it used to.*

Timothy and clover not near as heavy as it used to be. Wild hay was a poor crop. (V. 8, 28074.)

Did not cut eighty acres of wild hay. Bought wild hay for \$2.00 a ton in the stack. (Note: or for less money than he could cut his own.)

Can the Court construe a normal hay crop on this ranch in view of the above testimony which stands undisputed in this record?

Defendants quote Mr. Jacques, page 2812, V. 8, sold 1905 crop of alfalfa for \$10 to \$11 a ton. \$12 for timothy

and clover. Defendants do not state that this was the price for *what he did sell delivered* in Anaconda.

Defendants state sold 1905 crop. Jacques states on page 2772-3, V. 8, that he has sold *very little of his 1905 crop*. How does this compare with the above sweeping statements of the Defense? *Not at all*.

Mr. Jacques states can hardly sell it at all. V. 8, 2813.)

Now as to the price being normal, what does the record show was received for hay grown west of Anaconda and no trouble to sell it?

Defendants quote Jacques (21133, V. 53) as getting 4½ tons of alfalfa to the acre, which is true. But Mr. Jacques swears on page 21131, V. 53, that his crop on this thirty acres was *short twenty-five or thirty tons over 1905 on the first cutting*. Admits shortage of water on the second cutting, so does not give the yield. (V. 53, 21132.)

States first cutting on this alfalfa in 1905, cut six bents. First cutting in 1906, four bents, or one-third short. (V. 53, 21131.)

Defendants fail to show what the shortage of Mr. Jacques' grain in 1906 was.

“Had in forty-five acres of grain. Got 1230 bushels, *or about twenty-eight bushels to the acre*. (Jacques testifies, page 27685, V. 7), prior to the smoke, oats went from fifty to seventy bushels. “Very little wheat in this forty-five acres. Six acres, I *had hauled 300 or 400 loads of manure on this land*, a part of it, and the rest was *new land*.

Did not have a fair oat crop. (V. 53, 21141.)

Jacques states “I will tell you that the old ground that I had was *clover* ground, that I raised that big crop of

wheat on last year, and I hauled between three and four hundred loads of manure on it, on the same ground, and *that ground* ought to have went one hundred bushels to the acre. (V. 53, 21143.)

This was extra ground with manure all over it. (V. 53, 21143.)

The above shows Mr. Jacques gives his crops the best possible care, and still his grain crops average less than two-thirds of what they did prior to the smoke trouble, and *show a steady decrease in his hay and grain crops.* Also *shows he sells his hay from \$3.00 to \$6.00 a tone less than prices received for the same class west of Anaconda.* (V. 53, 2114.)

Defendants state as to his animal losses, only lost one horse in February of 1905 out of an average of thirty-three horses and seven cows, and a colt in 1906. (Record 2820, V. 8.)

Defendants in the above statement carefully confine themselves to the actual death of stock, and carefully avoid what Mr. Jacques says as to the care he has to give his stock to protect them, also as to their sickness and failure to breed. See what his testimony shows as to the actual conditions of this stock, as to being in normal condition.

“My stock *after the smoke came to my land, they were all smoked. I had to put them up in corrals and feed them and keep them there.* (V. 7, 2756.)

Horses got sore noses. All had sore noses (in 1902.) Lost two horses in 1902. Had to take them from green alfalfa ten inches to a foot high and put them in corrals and lock them up.”

Witness shows here how he kept his stock alive *in 1902, and escaped with the small loss of two horses:*

“While the *smelter was closed in 1903 my stock done all right.*” (V. 7, 2762.)

When in the fall of 1903 I noticed the horses getting the sore nose. Took them up and fed them, and fed them all winter through. (V. 7, 2762.)

Only one cow smoked this fall. Only had seven head. I kept them in the corral. (V. 7, 2762.)

Part of these horses were smoked so bad they did not shed until late in the summer of the following year. (V. 7, 2764.)

Has taken very good care of his stock. “Whenever I see them getting poisoned, I take them up and feed all they want. I have got all my horses penned up in the corral and they have been there three weeks. (I lost one nice one two weeks ago) and feed them all they will eat. (V. 7, 2766.)

Prior to the smelter, I kept my stock in the field, and very seldom fed them anything at all. (V. 7, 2766.)

Q. *Can you do that now?*

A. *No, sir, I can not.*

Q. *If you let them do so, what would happen?*

A. *Some of them might go throug the winter, but the others, probably one-half of them, would die.* (V. 7, 2767.)

I can not raise live stock on my ranch at present time at a profit.

These are the conditions on Jacques' ranch, and not as Defendants would try to convey by the showing of the loss of only two animals, *the same amount as he lost in*

1902. What animals die at the present time are only a small proportion of the loss to the stock industry of the valley.

Excess feed, excess care, sickness of the animals, as shown by this man, even under the extra care given by Jacques, keeping his cows in the corral all the time, and feeding them, all show what this man has been compelled to do to keep his stock alive and states under these conditions no profit can be made on the stock on his ranch.

In 1902 witness state he had 75 head of cattle and 28 or 30 head of horses. (V. 8, 2815.)

Five head of cattle died in 1902, which company paid for. Lost two horses in 1902, or a *total death of stock* in 1902 of seven head. (V. 8, 2817.)

The Defendants paid this man in damages in 1902 \$2,150. *What for?* Not for the stock that *actually died*, but mostly *for the damage to 72 cattle and 30 horses, which did not die, and crops.* And as shown by the amount paid this man that the actual loss in the actual death of stock is a very small proportion of the loss actually suffered by a farmer in the Deer Lodge Valley. \$350 would be a fair price for the two horses and five cattle that died in 1902, leaving \$1,800 paid in damages to stock and crops. (V. 8, 2822.)

B. F. NOTESTINE, Comp. Wit. :

Defendants quote (record 2866, V. 8)—Raises wild hay. In 1901, 180 tons from 160 acres. Since 1902 has cut 320 acres of wild hay. In 1902 got 425 tons of hay. Very good crop (2866, V. 8) in 1904. Had 400 to 425 tons. In 1905, 350 to 375 tons. Looked well in 1906 (record 2867,

V. 8), and says the hay crop looked generally well in the valley in 1905.

What does above show? That Notestine's hay is decreasing in yield. On page 2867, V. 8, states hay looked pretty good last year *standing in the field*, but states *the hay was not there* just prior to making the statement that the hay *looked* pretty good.

Defendants quote Notestine (record 2844, V. 8), as saying that this grain looked as good a piece of grain as he ever saw. Went twenty bushels to the acre.

The above is a clear misstatement of the record.

"I raised a small patch of grain last year, about eight acres. It did not mature very good. I thought the smoke was the cause of it not filling. It looked as good as any piece of grain I ever saw, and I thought I was going to have a good crop on it, but just as it was in blossom and commenced filling, the smoke blew over there two or three days and I noticed that the leaves had kind of spots on them, and had turned a reddish color, and it did not fill good. I thought it was the smoke. I don't know whether it was or not.

Q. *What was the production?*

A. *Why, I think it was about twenty bushels. I believe that is all there was—about twenty bushels to the acre."*

The above comparison clearly shows the twisting of the evidence by the defense.

Defendants gives Notestine's stock losses as small.

Notestine states he has lost horses since 1902, seven head of the old stock (or stock on which damage was paid in 1902) and four colts, and two horses he bought, or a total of 13 horses. (V. 8, 2836.)

Notestine states of the 12 or 15 head of cattle he had left in 1902 (2884) "have all died but one." (V. 8, 2883.)

Gives the loss as from twelve to fourteen head of cows in four years. (V. 8, 2880.)

Had four aborted calves from eight cows. (V. 8, 2881.)

States only has twelve cattle in his herd of twenty-five that is over two years old. (V. 8, 2882.)

Defendants give Notestine's total loss as seven horses and cattle. As shown by the above quoted pages, he lost thirteen horses and about twelve cattle and four aborted calves, *or a total of twenty-nine head of stock since his settlement in January of 1903.* The record itself shows an entirely different state of facts from the statements made by the Defendants. Shows a decided falling off in the hay crop, and instead of a small stock loss, a *large one.*

HARRY QUINLAN:

Defendants quote Harry Quinlan (V. 7, 2646), as stating hay, wild hay, crop has decreased for years.

We submit question and answer to this statement of Defendants:

"Q. Now, Mr. Quinlan, you may state about what year (if you know of your own knowledge) that you first commenced to notice any effect on this land that you mentioned of the condition of the stock and vegetation, anything wrong with them.

A. Well, there was one thing that we noticed there for a year, that our land did not bring the crops that it had *brought in previous years before;* there was a decrease in the busheling and in the hay, in the wild hay, there to a

great extent for years, but we could not say we noticed it directly or knew directly what it was until 1902.

In fact 1902 was the first time that we noticed there was damage on stock clear enough to distinguish." (V. 57, 2646.)

States on the part of the Quinlan ranch south of the creek in 1904 had eight bents of hay. In 1905 on the same land had four bents (a decrease of about one-half.) V. 7, 2653.)

Defendants quotes Quinlan (2726-28, V. 7), says potatoes and garden fairly good in 1905; sold hay to Montana Packing Company, \$5.00 a ton; fed on ranch; two cars to McCallum & Cloutier Company, \$12.00 a ton; sold all he had to sell. Defendants state the hay he sold for \$5.00 a ton was damaged by the weather. (V. 7, 2726.)

Quinlan states on 2727, V. 7, this hay he sold to Montana Packing Company was sold for \$5.00 a ton, *not in the stack, but hauled out by his man and team*, which would be worth at least \$1.00 a ton, so this brings this hay to \$4.00 a ton in the sack. *Defendants state this hay sold for \$5.00 a ton, was damaged by the weather.*

Quinlan, on page 2727, V. 7, states the hay he *sold* was put up *in good shape*. There was one stack on the ranch that was damaged but *was not sold*.

·Q. Had this hay been put up all right?

A. One stack of it had been put up in damp wet weather. There was one stack that was not very good.

Q. Did that have anything to do with the price?

A. *Do you mean the hay I sold?*

Q. *Yes.*

A. No, that hay was put up in good shape, but one stack on the ranch was not very good.”

Again we see the actual testimony entirely different from the record.

Now we will see about the two cars shipped to McCallum & Cloutier.

Quinlan sold two cars of timothy and clover to McCallum & Cloutier at \$12.00 a ton. “Paid \$12.00 a ton for the first car. The second they kicked and said they could not handle any more of it and were not willing to pay me \$12.00 for it. I used to get \$14.00 and \$15.00 for the same class of hay in 1902. (V. 7, 2728.)

Sold my 1902 crop for \$5.00 or \$5.50 a ton.” (V. 7, 2734.)

Quinlan states that tame hay used to bring \$13.00 to \$16.00 in Butte and Anaconda. (V. 7, 2663.)

Mr. Quinlan’s testimony shows the great depreciation in the *demand for hay, as well as in price, and directly the opposite to what Defendants claim* on these points.

Defendants state Quinlan shows small losses. This is true, but what was he compelled to do to avoid stock losses? *Moved all of his stock from the Deer Lodge Valley to Rock Creek, thirty miles away, and only kept a few work horses and a few milch cows in the valley, and when cattle were brought back to the valley to winter were fed all the hay they could eat and not allowed to graze, and were taken back to Rock Creek in the spring or sold.*

“Winter of 1903 and 1904 my stock I brought from Granite county did well; fed and grazed them. (V. 7, 2650.)

Fall of 1904 brought some calves back from Granite

county and bought some from Nevada Valley. Thought things were all right in the valley. Brought them to the ranch in November (these Nevada Creek calves) in less than two months had to feed them all they would eat to keep them alive. Stock from Granite county was only kept there forty days. We had to feed them, keep them up. Keep them off of the grass as much as possible. Lost four or five of the Nevada Creek calves and of the stock cattle, their condition was none too good. (V. 7, 2650-2651.)

We have no cattle there now, only some beef we are feeding, and some twelve horses and a few milch cows. The horses are kept up and fed in the barns and not allowed to graze." (V. 7, 2652.)

The above shows why Quinlan's stock losses are small. No cattle or horses kept on the ranch except what are fed there, and then only for short periods and not allowed to graze.

Defendants quote Quinlan's grain only going 28 bushels to the acre (2724, V. 7) by taking the smallest acreage, 25 acres. Quinlan states 25 or 30 acres. This shows a very small crop, even at that.

Defendants quote Quinlan as stating not able to cut part of their *grain* some years on account of it being so wet. (V. 7, 2741.)

Let us go back to page 2741, V. 7, and see about this. Quinlan states:

"Q. That swampy land interferes with the production and cultivation of crops on that land?

A. Well, that land we don't *pretend to cultivate any*

more than the hay that grows on it. I drained some so as to be able to cut it.”

Here again Defendants misstate the record, trying to show by their statement that Quinlan’s grain land used at this time is wet and not suitable for the production of grain, and thus accounts for Quinlan’s small yield, when the fact is, as stated by Quinlan, “We don’t *pretend to cultivate the wet land.*”

CHAS. B. JONES, Comp. Wit.:

Defendants gives Jones’ grain yield, showing a steady decrease from 1902 to 1905, or four years, but fail to show the further decrease in 1906. (V. 8, 3005.)

See what the record shows as to Jones’ grain crops:

In 1902 oats went fifty bushels to the acre; 1903, forty bushels to the acre; 1904, from five to eight bushels less than 1903; 1905 went twenty-two bushels to the acre; 1906, went fifteen bushels to the acre. (V. 8, 3006, V. 54, 21278.)

“The smoke did not affect the oat crop along until the fall of 1902. I harvested this crop in August.” (V. 8, 3029.)

Now we will take his wheat crop:

1902, 36 bushels to the acre.

1903, 33 or 34 bushels to the acre.

1904, 30 bushels.

1905, 28 bushels.

1906, 22 to 25 bushels.

Jones’ testimony shows when it is all given (*and not a part, as given by the Defendants*) oats decreased steadily since the smoke of 1902 from fifty bushels to fifteen bush-

els to the acre. Wheat decreased from thirty-six bushels to twenty-two to twenty-five. (V. 54, 21278.)

Defendants quote Mr. Jones, 1904 got 175 tons of alfalfa from 70 or 75 acres. In 1905 got 200 tons from the same acreage, or actually 63 acres, seven acres not cut.

Mr. Jones accounts for this increase as follows: "Part of this ground in 1904 was new ground, that was a poor stand. I reseeded it that year and in 1905 it came up good, you know." (V. 8, 3037.)

(NOTE—The seed sowed in 1904, cut in 1905, increased the crop in 1905, and the facts are not as *construed* by the *Defense* that the same ground increased in yield, but only did increase after reseeding in 1904. Actual amount cut to the acre in 1905, about 3 1-6 tons; while in 1906, from the same land, only (21287, V. 54) *got less than two tons to the acre, showing the same decrease in all kinds of crops grown on this ranch since the smoke.*

Defendants quote Jones (page 3037, V. 8) as having no fault to find with his alfalfa crop as to *quantity*, but the Court will notice he says *quantity*, and this only applies to 1904; *but* states it was not what he would call an average crop. (V. 8, 3038.)

Mr. Jones has explained the above answer as to *quantity* on this page. He says: "I have observed the difference in feeding the hay. I don't think it has the nutriment it formerly had. *I feed more now and it does not give as good results.*" (V. 8, 3010.)

Taking these two statements together, it shows that in 1905 he was satisfied with the amount of tons he got *that year*, but was not satisfied with the *quality*, and for a crop to be normal it must be all right in quantity, also in *qual-*

ity, and this hay was not. *But* in 1906 we see the decrease in quantity as well, or 85 tons decrease in 1906 over 1905, almost one-half. Again the Defense does not give all the testimony on a subject.

Defendants quote Jones as having sold all he has to sell. (V. 8, 3040.)

What does the record show? He sold 70 to 75 tons at \$5.00 Has to keep the rest for feed, or 125 tons for 35 horses (3013, V. 8), three cows and one calf, or a total of stock of forty head, to which he has to feed over three tons to the head under the smoke conditions; while Mr. Jones testifies he used to run as high as 125 horses. (V. 8, 3017.)

Jones states he hardly ever fed his horses during the winter months prior to the Washoe smelter. They fed on the range, "except my weaning colts, them I took up and fed, while nok I take up my horses in November and feed until about May 15th." (V. 8, 3012.)

"There is no snow now at all on my pastures. Under the same conditions (as to weather) prior to the operation of the Washoe Smelter, I would not have to feed at all." Even did not have to feed his work horses of a winter. "They did well on the pasturage in the fields. Stock won't eat the straw at all." (V. 8, 3012.) Has three stacks and the stock won't touch it. And in the face of the above statements the Defendants try to infer that Mr. Jones is satisfied with his hay crop. *His testimony shows he has to feed three tons to the head where prior to 1902 he fed nothing and his stock did fine.* (V. 8, 3013.)

Defendants state Jones sold all he cares to sell.

(NOTE—Jones did not care to sell any more because he had to feed five-eighths of his entire crop to forty head of stock.)

Defendants quote Mr. Jones (3054, V. 8), as stating he has made as much money on his ranch in 1905 as he has made any year since he has been there, and has no fault to find with his hay crop, the *quantity of it*.

The record of Mr. Jones' testimony, on page 3054, reads as follows:

“Q. Well, is it not a fact that you have made about as much on your ranch in 1905 as any year since you have been down there?

A. Very likely; I have no fault to find with the hay crop, the *quantity of it*. (Note here again he excludes the quality.) It is the stock that bothers me, *trying to raise stock is my business and it has got to be pretty near a total failure.*”

Does the above question and answer convey the same meaning as Defendants convey? *Most assuredly not.*

What does the above question and answer convey? Simply this, that for the year of 1905 he got about the normal *bulk of hay, but that is all.*

Defendants give Jones' total loss of stock for 1904, 1905 and 1906 as eight horses and three cattle.

This is *given in three years, doubtless to cut down the percentage of loss in any one year.* On page 3014, V. 8, or November of 1904, fixes the time of his first loss (since 1903) or from November, 1904, to February 15, 1906, a total time from which his losses start to the present, *or 15½ months over which his losses have extended, and not three years.* Less than one-half of that time. Jones tes-

tifies to having 36 horses. *Lost eight, or about 23 per cent for a period of 15½ months, loss on horses. Cattle loss as three.* The most cattle Jones testifies to having during that period *is three cows and one calf.* Here we have a *loss of about 75 per cent in cattle for 15½ months,* but the Defendants do not state what Jones says about the failure of his stock to breed. (Page 3016- V. 8, states not more than *25 per cent of his mares get in foal.* States in 1904 *bred 15 mares to four different stallions and only got three colts, or a loss of at least 75 per cent in the breeding of his mares.* One mare outside had a colt, or from a total of 16 mares got four colts. *Twelve out of sixteen did not breed.*

Jones states his horses die off as fast as he can raise them, so he has none to sell. (V. 8, 3021.)

As to losses in 1906, it only shows for 1½ months no deaths.

States for the last two falls of 1904 and 1905 all horses running on his field had sore noses very bad. (V. 8, 3011.)

GEORGE PARROTT, Comp. Wit.:

Defendants quote ranch near Stuart (page 3160, V. 8), 1903-4-5, cut about 100 tons of hay each year, but fail to state that Parrot (page 3160, V. 8) cut about 200 tons five or six years ago.

Parrott admits shortage of water for the last two or three years, but states the Defendant Company took his water to use on their farm, which joins Parrott's, to experiment with. (V. 8, 3163.)

Parrott states the smoke did him more damage than lack of water. (V. 9, 3193.)

Defendants quote Parrott as having 75 cattle and 25 horses in 1904. Lost six cattle and four horses. In 1905, 24 cattle and 18 horses; lost six cattle and two horses. In 1906, 15 cattle and 12 horses; no loss reported. (Record, V. 9, 3169-3176-3180-81.)

The only statement on which to base Mr. Parrott's having 75 cattle in 1904, is given on page 3202, V. 9. States he had 40 left after settlement with the company for 1902 damages. Bought 35 head in fall of 1903 (3207, V. 9.) States bought 35, which gave him 75 cattle in winter of 1903-4. States on page 3208, V. 9, he paid \$20 a head for these cattle in the fall. Kept them the winter of 1904. In 1904 they slunk a good many calves. "I found they were not woing well and in the *fall* I sold as many of them of them as I could for beef. I got \$20 a head for the grown stock." (V. 9, 3208.)

(NOTE—Only got the same price for these cattle he had paid for them the fall before. Could not sell at an advance sufficient to pay for wintering the stock. Could only get \$20 a head for beef. Mr. Parrott's testimony shows these cattle were *ranged on the east side of the Valley, and states he took them there to keep them away from the smoke, as he could not keep cattle on the Mill Creek range since the operation of the Washoe Smelter.* (V. 9, 3168.)

States sent the horses away. He got damage on two horses. (V. 9, 3210.)

We have carefully searched through the testimony of Mr. Parrott in the pages quoted by Defendants and fail to find where he gives any specific number of stock or losses, and the pages quoted by Defendants (V. 9, 3169-3176-3180-81) do not show what Defendants claim they do.

Parrott states on page 3169, V. 9, that out of a bunch of 24 head of cattle, mostly cows, he only got two calves. (Summer of 1905.) *Cows lost so many calves he castrated his bull and quit breeding both cows and mares.*

Cows were throwing so many dead calves it was no use to breed. (V. 9, 3170.)

States on page 3170, V. 9, he had 26 horses in 1902, but sent them away in the fall of 1902, so how do Defendants have them there in 1904?

The only thing shown on pages 3180-1, V. 9, in regard to stock is Mr. Parrott's losses, and no number is given of the number he had any year, or the loss in any year, but what he does state is as follows:

.....*"I have lost ten head of horses and twenty or twenty-five cattle since the settlement, stock on which no damage had been paid."* (V. 9, 3181.)

Mr. Parrott confines his losses to the stock which he bought in 1903 and to stock on which no damage had been paid, showing his losses were on stock which was not injured in 1902.

Doubtless Mr. Parrott had losses among the damaged cattle he kept but these he did not give.

Defendants state Mr. Parrott's losses consist of twelve cattle and six horses for a period of three years, and claim the above quoted pages show it. They show nothing the Defendants claim they show, but do show Parrott's losses over this period to be *twenty or twenty-five cattle and ten horses*. He states cattle, and no slunk calves are included in this, and they were so many in his herd he castrated his bull and quit breeding on *that account*.

Defendants quote Eli Desourdi, Comp. Wit., ranch six-

teen miles northeast of the smelter, 2000 acres patented land V. 8, 3056.) Thinks crops on his place not injured by the smoke (V. 8, 3068.) Ranch is on both sides of Deer Lodge Valley. Does not think his horses or sheep have been affected in any way since 1902. Record, V. 8, 3062-3.)

The Plaintiff makes no claim that land and crops or stock ranged in the vicinity of Mr. Desourdi's ranch are injured to any extent by the fumes from the Washoe Smelter, and Mr. Desourdi was put on the stand to prove the injury to his stock while being fed the hay and kept on the Gibbs ranch, which ranch was situated about six miles from Anaconda and in the Smoke zone; while Mr. Desourdi's ranch is expressly excluded from the Smoke zone by the testimony of W. C. Staton, who states no complaints have come in to any injury in that vicinity (see map) and Mr. Desourdi's claim is not for injury to stock and crops on his ranch, but only to stock fed and pastured on the Gibbs ranch in winter of 1904-5.

Keeps his cattle on Mullen, below the City of Deer Lodge five miles. (V. 8, 3057.)

“Had 178 cattle in winter of 1904-5. Bought hay on the Gibbs ranch that winter, and took my cattle up there to feed.” (V. 8, 3058.)

Took cattle to the Gibbs ranch in November; began to feed in December and feed until I got pretty well through with the hay and took them back to Mullen.

Some were so weak I kept them home and fed them alfalfa. There was thirty or forty of the weakest ones. There was four cows died. I sold this bunch of cattle in April. (V. 8, 3059.)

When I took these cattle from the Gibbs ranch they was just as bad as I ever saw any stock. (V. 8, 3059.)

While on the Gibbs ranch I fed them more than I generally feed range stock.

They got down poor and failed.

Were "smoked."

Sold 133 of these cattle in April for \$15.00 a head." (V. 8, 3060.)

(NOTE—Here we see Mr. Desourdi only sold 133, but had 175 on the Gibbs ranch, and showing the forty head was in no condition for sale.)

"I sold these cattle to Walker as smoked cattle and he was well aware of it, as well as myself. (V. 8, 3061.)

The market price of these cattle, if they were normal cattle, would be from \$20.00 to \$22.00 a head."

(NOTE—Showing a loss of from \$5.00 to \$7.00 a head on these cattle.)

"Cows lost a great number of calves. Got about one-third of a normal calf crop."

(NOTE—Shows a two-thirds loss on calves.)

Desourdi states his stock got the dose (or smoked) up near the smelter. (V. 8, 3069.)

"Cattle improved after they were taken away from Gibbs' ranch." (V. 8, 3077.)

Since the smoke came I keep my sheep in the mountains in the woods most of the time. In the winter I keep them on the ranch. *Have not kept any sheep on the west side of the river since 1903.*" (V. 8, 3089.)

Only has 100 acres of land on the west side of Deer Lodge River. (V. 8, 3098.)

“The stock I put in a bill for damages for was stock born after first settlement” (or 1902.) (V. 8, 3100.)

The Court will notice Mr. Desourdi settled with the Company for damages done in 1902 in about June of 1904, and after that time (June of 1904) he put in a bill through the Farmers' Association (see list given by Staton) for the damage to the stock which was born since 1902, which damage was done to this new stock in the fall and winter of 1904-5. Bill was presented, as shown by Staton's testimony, in 1905, and this bill was *for yearlings and calves.* (V. 8, 3100.)

(NOTE—No damage was claimed in this bill rendered for any land or stock except for the yearlings and calves on the Gibbs ranch.)

By the above the Court can see that the Farmers' Association makes no claim for injury to any of the *stock* or crops grown on Desourdi's ranch, but from the way Defendants' Brief reads one might readily infer that claim was made for damages to the Desourdi property in a like manner to the Bliss ranch, while the only injury claimed by Plaintiff for Desourdi is to stock fed and pastured on the *Gibbs* ranch in 1904-5. The Gibbs ranch is near the Bliss ranch. (See map.) And the Defendants can safely claim (as they do in their Brief) no injury to sheep, horses or crops of Desourdi, but they do not mention *cattle* in their Brief, the only thing on which Desourdi claims to have been damaged since 1902, and he does not claim any damage to them while on his own property or on the range, but states this damage was done on the Gibbs ranch.

JNO. BIELENBERG :

Defendants quote Jno. Bielenberg as having no trouble or stock loss since 1902-3. No damage to crops, and is pasturing his lands until September or October. (Record, 3131.)

The Court will see by examining the map that Mr. Bielenberg has twenty-two or twenty-three thousand of acres of land in the lower Deer Lodge Valley, situated on both the East and West side of the Valley. (Record, 3109.)

(NOTE—Complainant makes no claim for any injury to any one in the vicinity of Deer Lodge who range their stock on the east side, as the testimony shows the smoke stream goes mostly down the west side of the valley.)

Bielenberg states most of his land is *pasture land*. (Record, 3109.)

“Lost some cattle and horses in 1902.” (Record, 3109.)

Mr. Bielenberg here states the injury done to his cattle in 1902 *was on the west side of the valley*, five or six miles west of Deer Lodge, near the foot hills. Drove them out of the ranch. (Record, 3109, 3111.)

“The cattle done pretty well. We only lost one more out of this bunch. We took these cattle down below, towards the river (or to the east.) After that took them to the ranch on the river about four miles south of Deer Lodge.

We found dead horses in the pasture (in 1902.) They looked bad. The first thing we would know they would be dead.” (Record, 3111.)

(NOTE—This pasture was a little nearer Anaconda

than the one where the cattle died (3111.) The cattle died on the *west* side pasture.)

“I had cattle in the same pasture this summer (or 1905) where they died in 1902. Cows did all right with the exception of a few calves. I think the cows got some poison and gave it to the calves in their milk and the calves did not do well. V. 8, 3112.)

Some of the cows showed the effects. Shrank up. Don't look good. (V. 8, 3132.)

Can not use the pasture on the *west* side in the fall and winter. Will not chance it. In former years I used it. Cattle and horses did well up there. (V. 8, 3113.)

This pasture where cattle died in 1902 was on the *extreme west* side. (V. 8, 3113.)

Keep most of our stock out of the Smoke District. (V. 8, 3114.)

Keep most of our stock twelve miles *east* of Deer Lodge.

Used to use a pasture we called the Warren pasture. Do not use it so much at present. When *fall* comes on we are afraid of the smoke up there.”

The Court will see by Mr. Bielenberg's testimony that the only injury they suffered in 1902 was to stock pasturing on the *west* side of the valley, and since that time they do not use these pastures to any extent and not as they could before the smoke, and the Court can readily see why they have lost no stock since 1902, as Mr. Bielenberg states they keep them out of the Smoke zone.

“Had sore nosed horses about one year ago (or winter of 1904-5.) These horses were running on the west side and north of Deer Lodge.” V. 8, 3117.)

(NOTE—Here again Bielenberg confines the injury to the *west side*.)

Mr. Bielenberg states six or seven sections of land in this west side pasture, and states a winter like this (or winter of 1905-6) *if he could have used this pasture it would have saved him in feeding about two hundred tons of hay.*)

(NOTE—This is why Bielenberg has lost no stock since 1902. He knows the conditions on this portion of his land and does not keep his stock there.)

Bielenberg gives the normal cattle loss from natural cause from two to three per cent. (V. 8, 3124-3132.)

Bielenberg states he has had no trouble in his stock breeding, *but* doesn't keep any mares on the pastures on the *west side*. (V. 8, 3147.)

Defendants, in quoting John Bielenberg, fail to give the condition of his horses when testifying the second time on the stand, and is as follows:

“Since testifying in this case I have noticed one bunch of my horses, a bunch of twenty-four head. I got them up since going back from here (or from Butte, while giving in his evidence the first time) *and twenty-two out of the twenty-four had sore noses. They were running west of the ranch, about five miles below Deer Lodge.*” (V. 18, 7072.)

The above testimony clearly shows that this smoke zone is about the same in 1906 as it was in 1902.

The evidence of Mr. John Bielenberg, as cited, completely disproves the statement made that Mr. Bielenberg has no complaint or losses or trouble among his stock since 1902. Where Mr. Bielenberg states if he could have

used his west side pasture in winter of 1904-5 it would have saved two hundred tons of hay, shows his vegetation on the *west* side is injured.

WM. F. STEPHENS, Com. Wit.:

Defendants quote Wm. Stephens as having raised no grain until 1902.

Stephens states he has been raising grain off and on *all the time*, but on the *particular piece* of land on which he is being questioned about only since 1902. (V. 9, 3242.)

And the testimony of Stephens does show that from 1902 to the present time, has got about the same crop of grain every year, but only gies the yield of *this land* since the *smoke trouble*, or from 1902 to the present time, and states on page 3243, V. 9, he only began to farm this place in 1902.

We call the Court's attention to a few statements of Mr. Stephens in regard to crops of the valley which the Defense has probably overlooked.

"I have lived in the Deer Lodge Valley as long as I can remember." *Is thirty-six years old*. Is engaged in the business of farming and stock raising. (V. 9, 3217.)

Owens 480 acres of land. (V. 9, 3218.)

"The yield of hay *on my farm* is *one-third less than prior to the smoke trouble*. *The hay is not as heavy in weight, burned at the top and don't grow as tall*. (V. 9, 3223.)

There is a *general* running down of the crops in the last *three or four* years. They don't get as good crops and are harder to raise. (V. 9, 3225.)

The hay crop is not as good. *The grain crop is not as good*." (V. 9, 3234.)

(NOTE—As prior to operation of Washoe Smelter.)

“The special damage I have suffered since the operation of the Washoe Smelter is stock does not do as well; calves are puny and some of them die; crops are not as good and the feeding value of the hay is not as good.” (V. 9, 3237.)

Defendants give Stephens’ hay crop ofr 1902 as 200 tons from 245 acres (V. 9, 3246); 1905 crop, 140 tons from 180 acres (V. 9, 3223.)

But *they do not give the yield prior to 1902* or for 1903 and 1904, or the acreage. We will give his complete statements as to hay yield and amount of ground cut, also show that prior to 1902 his yield was larger than since that time.

Stephens states, on page 3247, V. 9, that the average yield of his land prior to the smoke trouble was a *little over a ton* to the acre. (Page 3248, V. 9.) “*We cut about the same on that ranch every year up to 1902.*”

“*In 1902 cut 200 tons from 245 acres.* (V. 9, 3246.)

(NOTE—*A shortage of forty-five tons from normal.*)

Cut about 215 acres in 1903. (V. 9, 3246.)

1903?

“Q. Do you remember what your yield was that year,

A. I don’t remember that year exactly.

Q. Well, approximately.

A. Well, I had less hay that year than in 1902.”

In 1904 cut about 200 acres. Don’t remember the yield in 1904.

In 1905 cut 140 tons from 180 or 190 acres. (V. 9, 3223.)

(NOTE—A decrease of fifty tons from a normal crop as compared to prior to 1902.)

Stephens' testimony shows that prior to 1902 he cut a little over a ton to the acre in 1902.

In 1902 vut 200 tons from 245 acres. "If crop had been normal that year should have had 245 tons on the 245 acres, or a ton to the acre.

In 1905 from 180 or 190 acres got 140 tons, or if had had a normal crop should have been from 180 to 190 tons, showing his hay yield is decreasing steadily ever since 1902; while his crops show a great decrease over what they were prior to 1902, or, as Mr. Stephens states " have decreased in yield one-third. (V. 9, 3223.)

Defendants state he sold 1904 hay for \$11.00 a ton in Anaconda. (V. 9, 3263.) In 1905 needed all his hay for his own stock.

(NOTE—In order to clearly demonstrate the meaning of the above statement, we must look into Mr. Stephens' other testimony.)

"Prior to the operation of the Washoe Smelter we could let stock run out on the fall and winter ranges in our neighborhood and they were in fairly good condition; while at the present time the live stock I have I am keeping them shut up in barns and corrals and feeding them, some of them bran, oats and hay. (V. 9, 3227.)

I do not allow them to pasture, because if I did they would get sick and die.

I take better care of my stock than I did prior to the operation of the Washoe Smelter, and we have to do it to keep them alive. I have forty or forty-five head of cattle at the present time, fifteen of which are dairy cows. Dairy

cows are kept in the barn and fed bran. Range cattle are kept in the corral and fed hay.”

Does not the testimony of Mr. Stephens, as given above, show *why he has no hay to sell of the 1905 crop?* Has to feed it all, or about 3½ tons to the head in order to keep his stock alive, while prior to the Washoe Smelter a ton to the head was ample in the Deer Lodge Valley for range stock and two tons for dairy cattle.

Here is a man with 245 acres of hay land (V. 9, 3246), in 1905 cut off this acreage of land 180 or 190 acres; showing he cut 55 acres less in 1905 than in 1902, *and it takes the whole crop of the ranch at this time, 1905, to support forty-five cattle and a few horses;* his ranch steadily decreasing in yield, and having to keep his cattle shut up in corral. Does not allow them to pasture at all in fall and winter. Where on earth can a man conduct a business profitably under such conditions?

“If I allowed anything for *wages and hay I would not make expenses on my dairy stock.*” (V. 9, 3228.)

I can not raise stock at a profit on my farm at the present time. (V. 9, 3238-9.)

Defendants state Stephens states every cow in his dairy herd had a calf and every calf lived in 1904-5. (V. 9, 3254.)

Defendants again carefully stick to *dairy cows* in the above statement and say nothing of what happened to the stock cattle.

Stephen states “Have lost some calves from the range stock, some that were born alive died and some aborted. (V. 9, 3253.)

Three died that were born alive.

Raised twenty-four or twenty-five that were born alive. I have noticed three abortions in the range cattle.” (V. 9, 3254.)

Stephens states the calves that live are weak and puny and some of them never do well. (V. 9, 3221.)

Defendants claim that Mr. Stephens has lost no cattle. What do Defendants claim calves are? Are they not cattle?

His testimony shows it takes the entire crop and pasturage of 480 acres of land to keep about forty-five cattle and a few horses. Mr. Stephens shows he does what all the farmers of the valley have testified it is necessary to do to keep stock alive, to-wit: Put them in barns and corrals and feed hay, bran and oats, and still he can't avoid loss of stock; and he testifies the way he has to keep stock at this time deprives him of all profit. (V. 9, 3227.)

D. L. GRIFFITH, Comp. Wit.:

Defendants quote Mr. D. L. Griffith (V. 9, 3370), as stating he can take two acres of rutabages in the Deer Lodge Valley and make as much money on it as the best farm in the Bitter Root. Vegetables the same in 1904 as in 1901. V. 9, 3371.)

Let us see about the rutabaga statement:

“Q. As you could make off the best farm in the Bitter Root Valley? (V. 9, 3370.)

A. The best orchard; I said that, yes, and I will say it still. I can take two acres, I think I can take two acres of rutagabas, *that is if they were in condition such as I have had them*, because I can raise twenty-five tons to the acre, if they were in condition, you know that if *everything was as favorable as it was*. I can make off of two acres

of rutabagas, I believe, more than they can off of the best fruit farm in Missoula.”

Has the Defense not stretched Mr. Griffith’s testimony here? We think so.

Defendants state Griffith’s vegetables the same in 1904 as in 1901. (V. 9, 3371.)

Let us see what Griffith says about vegetables on his ranch since the smoke.

Been farming in the Valley since 1882, *principally market gardening.* (V. 9, 3357.)

“After the smoke came down on my vegetables I would notice they would wither, when the vegetables were young. After they got larger they would not show it so plain, but when the vegetables were young something certainly affected them, beets, carrots, peas and such stuff as we can raise. (V. 9, 3357-3359.)

“The particular effect I noticed on my vegetables, I went into my garden in April. We plant in April. I saw the vegetables had come up very well. My parsnips and beets especially. I went back in a few days and found a good many of them missing. I presumed the smoke did it. (V. 9, 3359.)

Q. When you look at the vegetables that were missing could you find them there yet?

A. *They had withered.*

Q. *Just withered?*

A. *Yes, sir.*

This was last April (or April, 1905.) Had a poor crop that season. Beets and parsnips were near about a failure. My rutabagas had stood it well, *those that were not missing.*

There were spots on the beets and turnips—small spot like something had dropped there, that had eaten that part of them. (V. 9, 3360.)

Q. How about your crop of 1904?

A. I did not raise a good garden for a number of years.

Q. *How has your garden been since the operation of the Washoe Smelter. Has it been profitable?*

A. *No, sir, I have not made anything.* I have turned my attention to other things, because my garden was not profitable. I sowed alfalfa.

Q. *I will ask you to state can you garden at a profit there at the present time?*

A. *No, I can not."*

"Prior to the operation of the Washoe Smelter my gardens were fairly well and profitable. (V. 9, 3370.)

Defendants state Griffith sold \$300.00 of rutabagas from two acres. (V. 9, 3374.)

Griffith states 25 tons of rutabagas to the acre a good crop, 20 tons easy and an ordinary crop would be 15 tons. States he gets from 90 cents to \$1.05 a hundred for rutabagas. (V. 9, 3374.)

Griffith on page 3373, V. 9, states he only got about 15 tons in 1905 from about 2½ acres and it was not a good crop, and as shown by his testimony, not one-half of an ordinary crop. Griffith gives 15 tons to the acre, or 30000 pounds, at about \$1.00 per hundred. The price he gets would be \$300.00 for one acre of an ordinary crop or \$500.00 per acre for a good crop. And Defendants quote him as making \$300.00 from two acres, while he should have received that amount from one acre, even for an ordinary crop, showing Mr. Griffith got about half a crop.

Got five sacks of parsnips in 1905 from $\frac{3}{4}$ of an acre. In 1902 sold \$608.85 from the same piece of ground. (V. 9, 3375.)

Got 18 sacks of beets in 1905. (V. 9, 3376.)

(NOTE—The above yield is for 1905, the year Mr. Griffith describes the killing of his garden in April, and he states in his opinion it was the smoke. Now does the above testimony compare with Defendants' *Not at all.*

Defendants give his alfalfa yield as 100 tons from 50 to 55 acres, 3378-9, V. 80, and sold \$1000.00 worth in Butte at \$10.00 a ton.

(NOTE—The above does not show even an ordinary yield.)

“McCleary & Thomas, (*Defendants' inspectors,*) went through my alfalfa crop in 1903 and told me the smoke had been there.” V. 9. 3382.)

Griffith states a portion of the depreciation of crops should be assessed to the tailings damage. (V. 9, 3390.)

Mr. Griffith states he was in the sheep business. Thinks the old works did some injury to the grazing interests, but after the new works started his sheep commenced dying. Was paid for his sheep damages of 1902 and 1903. (V. 9, 3365.)

States smoke killed his sheep. (V. 9, 3364.)

Defendants states Griffith shows no stock losses but one horse.

Griffith states “*I keep up my cows and feed them.*” Has only three. (V. 9, 3366.)

WM. J. EVANS, Comp. Wit.:

Defendants quote Wm. Evans' ranch adjoins Staton's and Section 16, 1900-1.

Cut 350 tons of hay. (3474, V. 9.) Cut the same amount in 1905, 350 tons. (3474, V. 9.)

We wish in regard to the above clause to call the Court's attention particularly to Mr. Evans' hay yield. The pages and testimony, as quoted by defense to be on page 3474, V. 9 where Evans states he cut 350 tons in 1900, and in 1901 the same amount, also where he states he cut 350 tons in 1905 (3474.) *But we call the Court's attention to a very vital correction of this statement made by Mr. Evans while still on Direct, on page 3479, V. 9, where Mr. Evans states as follows*

“Q. Another question I am going to ask you, Mr. Evans, this morning. You said you were mistaken about the hay—Mr. Evans, I will ask you to state to the Court how much hay you *cut last year* on this ranch. (V. 9, 3479.)

A. About 200 tons.”

(NOTE—Evans on the stand in February, 1906, *last year* would be 1905, and is a complete correction, so we see Evans' testimony, when examined carefully, instead of showing he cuts as much hay in 1905 as prior to the smelter, cut 150 tons *less*, or a loss of crop of almost one half. *Evans has 520 acres of land*, so the evidence quoted by the Defense would mislead the Court.

Defendants quote Evans “Sold hay for \$8.00 and \$9.00 a ton in 1905.” (V. 9, 3483.)

Evans states the market for hay was very poor, from *six* to *seven* dollars a ton. (V. 9, 3483.)

This hay sold for \$8.00 and \$9.00; was delivered at Montgomery Slaughter House at \$8.00 (3503, V. 9,) *and only sold 22 tons for \$9.00 a ton and delivered to Defendants' ranches or to Cook & Miller* (3503-4, V. 9.) This was the

hay crop of 1904 and not, as quoted by Defendants, as shown by his cross examination on page 3506, V. 9, the 1905 crop. "I have tried to *sell, I have sold a little. They told me they did not want it. I have sold some of the 1905 crop delivered at \$8.00 and \$9.00. (3507, V. 9), to Mr. Cook on the Company Ranch.*"

Mr. Evans states wild hay prior to operation of Washoe Smelter sold for \$8.00 and the tame hay for \$10.00 a ton in the stack. (V. 9, 3482.)

Now has to *deliver* his hay *for less money* than he formerly got for it *in the stack*, and can't sell it readily even at those prices.

The Defendants state (and it is *only a statement* made by Counsel for Defense) that this man's testimony shows he is conducting his ranch just the same as in the early days, pasturing his *cattle* the same, feeding his work horses, and in all respects carrying on his place as he always did.

The Defendants when they incorporated the above statement must have thought the Court, or the Plaintiff, would not have time to investigate Evans' testimony. They give no pages of Evans' testimony to substantiate their statement and their statement is absolutely untrue and not borne out by the Record. First we will give the way he conducted his ranch before the works and the amount of crops raised and stock kept.

Business, raising hay, before works, and stock and some grain, 3468, V. 9, on 520 acres of land. (V. 9, 3467.)

Been on this ranch since 1867. (V. 9, 3168.)

Fair crop of oats on my land *before smelter, thirty bushels to the acre; wheat, 18 to 20 bushels.* (V. 9, 3471.)

“Prior to operation of the Washoe Smelter, we turned our cattle in the fields in the fall and in the summer on the range. They were fine, always fat, in fine shape, no sickness among them at that time. Once and a while one would die. (V. 9, 3473.)

Cut 350 tons of hay prior to 1902. V. 9, 3474.)

We used the range adjoining the valley for our stock prior to 1902. (V. 9, 3475.)

Range was fair in 1899 to 1902 about four miles from the ranch.

Bring in the cattle and horses from the range in September and October. They would come in fat. (V. 9, 3476.)

Would turn stock on the range in April and May.

The principal industry of the valley for the past thirty years, and prior to operation of the Washoe Smelter, has been the raising of hay, grain and stock. (V. 9, 3482.)

“Prior to the operation of the smelter, the general condition of the valley as to stock was good. Stock done well there.

Never had sickness among our cattle. An occasional case of distemper among the *horses*, but never lost any.

The hay was heavier then, and heavier crops.

Price from \$8.00 to \$10.00 in the stack.

The breeding of stock prior to the erection of the Washoe Works was good. (V. 9, 2485.)

After the Washoe Smelter was closed in 1903, crops took a rapid growth. Quality was fair that year.

Not *one-tenth* of the stock in the valley there was five or six years ago. (V. 9, 3487.)

Land worth \$50.00 an acre in 1900-1. (V. 9, 3487.)

Timber alive and green and looking well prior to opera-

tion of Washoe Smelter, Beban dying since 1902. (V. 9, 3490.)

Kept 60 to 65 horses and 100 to 165 cattle prior to operation of Washoe Smelter. (V. 9, 3491.)

Hardly ever fed cattle and horses prior to the Washoe Smelter unless there was snow, and their condition was all fair." (V. 9, 3491.)

Now we will show how he conducts his business and its results since the operation of the Washoe Smelter:

Lives $3\frac{1}{2}$ miles southeast of Washoe Smelter. (V. 9, 3467.)

Oat crop and wheat not good in 1904. *From thirty acres of land in 1904, yielded only 125 bushels, about four bushels to the acre.* (3496). Sowed no grain in 1905. (V. 9, 3469.)

Condition of the crop, short; did not grow; tops turned red. Growth was not as large as formerly. (V. 9, 3470.)

Since the operation of the Washoe Smelter cattle got poor, hair rough and would run down. Eyes would water. Cows would lose their calves. (V. 9, 3471.)

Calves that were born were weakly. (V. 9, 3472.)

Horses get sore noses and some go crazy.

Horses don't stand work.

Have fifty cattle. *Now keep them on French Gulch in the summer.* Keep them in the valley in winter and feed all the hay they can eat.

(NOTE—French Gulch is 22 miles away.)

The reason I keep them in French Gulch during the summer is *they wont live on the ranges here or in the field.* (V. 9, 3473.)

Bring cattle from French Gulch in November.

Kept no cattle there prior to the operation of the smelter. First commenced feeding in French Gulch in 1902.

Hay is not as good; timothy is short and the tops get red and is getting thin, thinning out, and is lighter in weight. (V. 9, 3474.)

The feeding qualities are not as good. It has not got the strength it used to have. (V. 9, 3475.)

I can tell it has not got the strength in it as formerly by the cattle and horses.

Can't let horses and cattle run on the range at the present time. I have tried it; they get sick and die. (V. 9, 3476.)

Sold horses in 1902, about February 22nd.

Have 54 cattle at present time. I can not keep these cattle on the home ranch at the present time without feeding them. (V. 9, 3477.)

Hay is thinner and lighter in weight, and has a dust on it. (V. 9, 3477.)

Only saw sore noses on the horses since the operation of the Washoe Smelter.

Sick condition of the cattle only since operation of the smelter.

Feed stock from December to April and then take them to French Gulch. (V. 9, 3478.)

Have twenty-three horses but only six on the ranch; the rest in French Gulch.

Doing nothing with these horses. Got them there feeding them hay. (V. 9, 3479.)

In the dairy business in 1902. Most of the cattle got sick and died. Cows lost milk and went dry. Cows would lose their calves; mostly all died in 1902. (V. 9, 3481.)

Calves raised since 1902, some are strong and some are weak, *but we have not kept cattle in the valley since 1902 only in the winter.* We bring them right in and *feed until spring and don't let them feed on the grass.*

Since operation of the Washoe, hay \$6.00 and \$7.00 a ton and poor sale. (V. 9, 3483.)

(NOTE—No general market for his hay at this time. His testimony shows all the hay he has sold for two years was to butchers at their slaughter houses where they only feed stock a few days at most before they are slaughtered, and a few tons to the Defendants, or Cook & Miller.)

Can't raise stock on the Ranch at this time. (V. 9, 3484.)

Stock worse affected on our ranch in the spring. (V. 9, 3486.)

Cattle would get the scours and get thin and the horses would get sore noses and get crazy spells.

Cows lose most of their calves and those that dont die are weaklings: some would die; some would not.

About one-tenth as many stock in the valley as five or six years ago. (V. 9, 3487.)

Crops and vegetation in my vicinity at the present as compared with five or six years ago poor, not the crops there used to be.

My land now worth from \$5.00 to \$15.00 an acre.

Can't make a living on the ranch at the present time. (V. 9, 3487-8.)

Timber on Mill and Willow Creeks dying. (3489.) About two-thirds of it. Have noticed this as far back from the valley as eight miles. *This dying has occurred since 1902.* (V. 9, 3489.)

Can not keep any stock on my ranch, and turn them out and do not feed them. (V. 9, 3490.)

Cattle and horses do not do as good now on the same kind of hay as formerly.

I feed stock all the hay they will eat, at the present time, while before the operation of the smelter, *I hardly ever fed* unless there was snow and their condition was *all fair*. (V. 9, 3491.)

Q. How many horses did you have in 1903? (V. 9, 3513.)

A. *Well, I cannot recollect exactly. I have had several Wenger (the butcher),* pastured cattle on my ranch in 1905. (V. 9, 3520.)

Wenger never kept his cattle on the ranch more than eight or nine days before he killed them. They were beef. (V. 9, 3521.)

Have nothing but work horses on the ranch at present and dont turn them out at all. (V. 9, 3527.)

Prior to the smoke, we figured on a ton of hay to (a head) winter stock. (V. 9, 3527.)

Now, we feed them like you would feed beef, all the hay they can eat, and they don't keep up on it; the way we generally feed our stock they ought to keep up and make beef."

The testimony of Mr. Evans shows no similarity as to the conducting of his business, or the returns from that business as compared to before and after the smoke period.

His testimony shows:

First. Hay crop reduced from 350 tons in 1900-1 to 200 tons in 1905.

Second. Good sale at \$8.00 and \$10.00 on the ranch prior.

Poor sale at \$7.00 to \$9.00, delivered, and that hay only sold to butchers to feed cattle they were killing and to Defendants.

Third. This oat yield prior to the smoke, 30 bushels of oats; wheat 18 to 20 bushels.

Since smoke, 1904, 125 bushels from 25 acres of oats and five of wheat, about four bushels to the acre.

Sowed no grain since 1904.

Fourth. Could and did keep on his ranch and valley range from 60 to 65 horses and from 100 to 165 cattle. Used the pastures as long as there was feed not covered with snow, prior to the smoke. Since the smoke, has kept no cattle or horses on the ranch or ranges of the valley. Has about fifty cattle and twenty-three horses. Keeps them twenty-two miles away from the valley in French Gulch and only brings the *cattle* back in the winter and does not allow them to eat the grass, and feeds them the same as he would beef cattle and they do not do as they should. Decrease in the stock owned by over fifty per cent.

Fifth. Prior to 1902, used the range and fields of the valley for pasture with good results. Since 1902, cattle and horses will die if allowed to use the range or field pasture. Has tried it and they died.

Sixth. Hay has not the feeding value it formerly had; prior to 1902, fed about one ton to the head. Since, feed like feeding beef (or twice the amount as shown by all beef feeders.)

Seventh. Cows and mares bred well prior to 1902. Since 1902 cows abort and calves are puny. Can only get calves by keeping cows out of the valley and not letting them eat the grass.

Eight. Only keep work horses on the ranch since 1902, and dont turn them out at all. Prior to 1902, kept all horses on the ranch and range, and only few when snow was on the ground. Breeds no mares.

Ninth. Lost several horses and many slunk calves since 1903, and a great number of cattle and horses in 1902; since which time has kept his stock *out of the valley* in the *grazing season*, or from April to December.

Tenth. Prior to 1902, no sickness among the cattle and only an occasional case of distemper; lost no horses from it.

Since 1902 and up to the present, cattle and horses are sick and die; which sickness, or the same symptoms of sickness, never appeared until after the operation of the smelter.

Eleventh. In 1902 was in the dairy business; most of the stock died; kept no cattle on the ranch, since 1902, continuously, only keeps them ther to feed in winter.

Twelfth. Always kept his stock in the valley all the time prior to 1902.

Since 1902 has kept them in French Gulch and never kept stock there prior to 1902.

Thirteenth. Land worth \$50.00 an acre prior to 1902; since, \$5.00 to \$15.00.

Fourteenth. Can't make a living on the ranch at the present time, while prior to 1902 conditions must have been good, as his father owned the ranch since 1867.

Defendants' state he reports no losses in 1904-5.

(NOTE—He has no losses for the reason he does not keep his stock on the ranch, and states the only way to raise stock and keep them alive, is to do as he does,

keep them out of the valley and vicinity and when he brings them back, not to allow them to eat the grass, and feeds all the hay they will eat.)

JNO. QUINLAN, Comp. Wit. :

Defendants quote John Quinlan as having forty acres of oats in 1904. (3693-4, V. 10.) Got forty bushels to the acre.

Quinlan states, page 3600, V. 10, that prior to 1902 never say oats or wheat to miss that he did not get a good fair crop.

Varied some from year to year. A fair crop would be from fifty to sixty bushels. Have raised as high as 75 bushels. (3600, V. 10.) *Got 75 bushels to the acre most every year.*

Quinlan has been in the valley since 1864. (V. 10, 2664.)

Quinlan states, on page 3603, V. 10, (We find no reference to any 1904 crop on pages 3603 or 3602.)

“In 1904 had forty acres of grain. It went less than forty bushels to the acre.

It was a light crop. Not as good as last year (or 1905.)” (V. 10, 3604.)

On page 3601, V. 10, Mr. Quinlan states he had in about forty acres of oats in 1905. Went about forty bushels to the acre.

(NOTE—Showing *he was from ten to twenty bushels to the acre shorter than before the smoke on his lowest yield given and about 35 bushels from a good yield.*)

Defendants give Mr. Quinlan's yield for 1905 as 47½ bushels to the acre and quotes pages 3601-2, V. 10. No such statement is found on those pages, but 3601-2, V. 0, show a yield of forty bushels and *no more.*

Defendants quote Quinlan, "hay crop in 1905, fair crop; better than 1904." (V. 10, 3603.)

Quinlan on page 3603, V. 10, states he has forty acres in tame hay. "I know the tame hay was very light last year (or 1905.) *All of the clover was dead, nothing left but the timothy.*

Q. Do you know what the wild hay crop was?

A. No, sir, I do not.

Q. As a matter of fact, it was a fair hay crop, was it not?

A. It was a kind of fair crop of hay, yes, sir."

Quinlan states he saw the effect on his hay and oats in 1905. "Turned it red like it was burned. Last year was the *first* year I noticed it." (V. 10, 3584.)

Defendants quote Quinlan "Fair demand for hay in 1905. (3603, V. 10.) Sold hay from \$4.50 to \$5.00 a ton, fed on the place, alfalfa hay."

(NOTE—Quinlan does not mention alfalfa hay in his testimony as grown on his ranch.)

Quinlan states on page 3594, V. 10, that the price of Deer Lodge Valley hay was better prior to 1902 than at the present time. Note: And Mr. Quinlan's testimony shows that he has had to sell his hay from \$3.00 to \$3.50 a ton *less* than hay of the same class bought *prior to* 1902.

Defendants state Quinlan lost only one horse in 1905, and that this is the only loss he reports since 1902-3, though he had 125 to 130 cattle and 22 to 23 horses upon his place. Record 3610-19-33-40, V. 10.

We will now give the conditions of Mr. Quinlan's stock as shown by his testimony, which is undisputed in this record.

“The first I noticed the effect of the smoke on my stock was in the fall of 1902; the horses had sore noses; the cattle died; a whole lot of them unable to walk; a very few of them came in a good condition last fall; all of my stock were thin. I mean by ‘came in,’ when they came in from the range to the home. I never noticed a like condition of my stock prior to the year 1902. In 1903 the cattle came in not so bad; the smoke was not coming down that summer. *In 1904 my horses were worse; in a bad fix; I had to take them up and doctor them; I had about 20 head. The ones that were in the higher pasture were the worst. The cattle came in thin in 1904.* (V. 10, 3584.)

In 1904 I had 105 cows and had only 19 calves; these cattle were running on Dempsey Flat and Modesty. I now have about 20 or 25 head of stock on my farm. This fall my horses were so bad I gathered them up and sent them over to Rock Creek,— this was about the middle of November. (V. 10, 3586.)

(NOTE—*This Rock Creek is 30 miles west of Anaconda. I gave my stock all the hay they could eat, that was all the care I took of them.*)

I started to feed a little after November,—the last of November, I think. Prior to 1902 we used to feed them when it was bad weather,—we never used to feed until the last of Christmas, or New Years; in fine weather we never fed them anything at all until the last of the year. The only reason I can assign in not getting more calves from the 115 cows is I didn’t get them; *the cows did not have any calves; I don’t believe there was any calves in them; I never saw them breed that way before. In 1905 I had less*

calves than I had on my ranch before. The horses were not very bad looking. (V. 10, 3588.)

As soon as I saw their noses getting sore I took them up and attended to them; eight died. I lost four head of cattle in 1902. (V. 10, 3589.)

I never have seen any disease among the cattle or horses, except distemper. *I never saw, prior to 1902, any of the conditions among the cattle and horses on my ranch that I have noticed since that time—the same kind of sickness,—I have never noticed any of it before the erection of the works. I never noticed anything like this during the entire time I have worked in the Valley. (V. 10, 3591.)*

If there was no smoke we could run a good deal more stock than we do now. I received a settlement from the Company in the fall of 1902. (V. 10, 3608.)

Q. *How many yearlings have you now?*

A. *None.*

Q. *How many two year olds have you now?*

A. *None.*

Q. *How many three year olds?*

A. *None.*

All my horses are on Rock Creek, except nine or ten. Some of the horses on the ranch look pretty good and some do not. I don't think there is a good horse down there; even my work horses are poor; they are the worst. (V. 10, 3620.)

The work horses get a little oats. All the horses we sent to Rock Creek have sore noses. (V. 10, 3621.)

I have been in the Valley since 1864 *and I never lost a horse or a cow from alkali; they always had it and always got it. There is none of my land that I cannot cultivate*

that there is alkali in, just the same as if there was none. (V. 10, 3622.)

I have bred seven mares in 1903. This year I only got one colt. *My gray saddle horse went crazy and killed himself; he knocked the fences down in three or four places; he was dead when I found him.*" (V. 10, 3631.)

Defendants state he shows no stock losses. We think Mr. Quinlan shows enormous decrease in the breeding of his stock and his testimony shows the general smoke sickness.

(NOTE—Mr. Quinlan's Release for damages in 1902 shows the same features as all the other releases given and that is, that the stock that actually die is only a very small amount of the damage to stock, as sickness which renders the stock useless for work, breeding, or for beef, is a greater loss to the farmer than the actual death of the stock themselves. If the cause of this sickness was only temporary this would not be true, but where the cause of the sickness is permanent, as is the case in the Deer Lodge Valley.)

While all of the stock are not sick all of the time, *there is hardly any of the time but what some are sick from the smoke poison, and where the stock are in this unthrifty and sick condition a farmer would be money ahead if they would all die at once, instead of having them continue to die off about as fast as he can raise them.*

Mr. Quinlan shows he has been compelled to remove all his horses from the valley except a few work horses, and his cattle have been all sold off to avoid loss, as he shows that from a bunch of 105 cows he only got 19 calves, and states at this time he has only 20 or 25 head of stock on his farm of three sections, of 1890 acres, about one animal to every hundred acres of land owned.

“If there was nothing wrong I would not have had to feed a ton of hay to my stock this winter (1905-6) and they would have ben in better fix than they are today. (V. 10, 3587.)

Cattle wont eat the grass and if they do it wont do them any good.”

KREIDER, Comp. Wit. :

Defendants quote Mr. Kreider, 3887, V. 10, as stating the dandelions have taken a good many meadows in the valley, including his.

The testimony of many of the farmers states the smoke kills the timothy and clover. Some of the witnesses who have testified to this are K. D. Smith, Jno. Quinlan, G. C. Cummock, Evan Jones, and W. C. Staton, and as a natural consequence dandelion and other noxious weeds come in, *but notice Kreider states four years ago he cut two tons to the acre. Had alsike clover, lots of it.*

(NOTE—Dandelions did not trouble then but only in the last four years, or since the smoke.)

Defendants quotes Kreider “Got a ton to the acre last year, from twenty acres.”

The Defendants confine their argument in regard to Kreider’s hay to his timothy patch of 20 acres and carefully avoid the whole of Kreider’s hay lands and crop. Let us see what Kreider actually says about it.

Kreider states, page 3865, V. 10, “*Cut as high as 150 tons of hay prior to 1902.*

Cut 35 tons in 1905 of clover, timothy and alfalfa. After the smoke came the hay got burned on the top. It takes more hay to feed. It is lighter in weight.” (V. 10, 3863.)

Can the Court conceive *how the dandelions would cause*

the *top of the hay to burn* and what hay cut to be *lighter in weight*, and to take *more of it to feed?* We hardly think so, or cause a *shortage of 115 tons in four years on the same ground.*

Kreider had the same amount of ground in 1905 (in hay) as in 1898. (V. 10, 3864.)

Can't sell what hay he has to sell. Butte merchants state if they bought hay from the valley they *would lose their trade.*

Would dandelions cause that?

Defendants quote Kreider "Can't kick on crop of timothy 3899, V. 10.

Kreider states on page 3899, V. 10, he did not get over one ton to the acre in 1905 and states he only got one-half of what he used to cut on the timothy and coever, and has no particular kick on that, but states his kick is on the killing of his stock by the smoke.

Defendants quote Kreider, page 3910, V. 10, as stating his crops were better in 1905 than in 1904.

Kreider states, 3910, that 1904 was not as good a crop year as 1905, meaning the season was not so favorable for crops, and on this page states *why he* had more hay in 1905 than in 1904, and states his alfalfa had not grown yet, or come into bearing, (in 1904.)

Defense quotes Kreider as getting 70 bushels of oats from two acres and 165 bushels of wheat from six acres in 1905. (3906.)

Kreider, 2905, states this land was potato land and *states potato land produces twice the amount of grain ordinary land does.*

(NOTE—And even under these conditions Kreider did not get a normal crop; oats 35 bushels to the acre and wheat 27½ bushels.)

Defendants state Kreider lost no horses since 1902. (3862.)

Kreider states the horses he has had since 1904 he has to feed *extra* and they are thin and weak and they don't work as well as before. (V. 10, 3862,3.)

States he has *not turned his horse out for two years.* (V. 10, 3891.)

Company paid Kreider \$1,512.50 damages in March 18, 1903, and admitted the smoke was killing and injuring his stock at that time. (V. 10, 3894.)

Kreider's testimony shows that he has kept his horses for two years and fed them *extra*, not allowed to *graze* but *kept up*.

This simply shows this man knew the smoke was injuring his stock and knew the only way to protect his horses was to keep them in close confinement; and that is the only way a farmer can keep stock alive in the valley at this time. A man can live on a farm without cattle but it is impossible to farm *without horses*, so the cattle were permitted to graze and the horses were not, and another reason for the extra protection of the horses is on account of their greater value. *But we submit to the Court that if a farmer and stock raiser, from any cause, is compelled to keep his stock in barns and corrals the year round, if it will not cost more than the average animal is worth and is an immense damage to the farmer even if his horses do do well?* Look at the difference in how this man keeps his

horses now and what condition horses were kept under prior to 1902.

Defendants quote Kreider's cattle loss of 24 head 1904-5, (3880-1) no deaths during the fall and winter. (3881.) Two died in January, 1902, before the smelter started, and balance (except one) in February and March before any one in the valley had smelter trouble, and his loss started before the smelter started; lost no cattle after July 21, 1905; lost no horses. Kreider stated they were examined by veterinarian (2880-1), and stated the veterinarian told him it was *smoke* but that the veterinarian reported differently to the Court. The only animal testified to belonging to Mr. Kreider was by Dr. Faunt, which he states was suffering from generalized tuberculosis (2365.)

The Defendants in the above quote "No deaths during the fall and winter," but do not state this question refers to the fall and winter of 1905. The record shows Kreider's losses were in the fall and winter *months mostly*; only one in July.

January 16th to August 16, 1902. 3882.)

February 13th to April 20, 1903. (3883.)

In 1904 lost 12 head, no dates given. (3866.)

In 1905 lost 14 head from January 2nd to July 25th.

In 1906, February 5th to 6th, 2 head. (3867.)

The reason the Defendants insert *no loss* in the *fall and winter* here, doubtless to try and bolster up their statement made in the fore part of their Brief where they quoted Staton's and Kreider's losses as occurring in the summer months, or about the season of the year that the Court visited the Deer Lodge Valley, and they try to show these men's losses at about that time of the year to try and con-

vince the Court that at the time of his visit to the valley, on August, stock were in their worst condition, but the Court will see by Kreider's testimony his losses have always been in the fall and winter, and directly opposite to what they state.

Kreider states on page 3883, V. 10, that in the year 1901, or prior to the Washoe Smelter, he never lost one head of stock.

They try to throw a doubt in regard to Kreider's losses in 1902-3 not being caused by the smoke, by the fact that he lost *two head* before the smelter started, *which Kreider states were not paid for.*

The Defendants introduce a release from Kreider showing they paid him for smoke damage over \$1,500.00 and now try to show by the death of two head prior to smoke trouble that there was no smoke trouble at Kreider's, even in 1902-3. Does the Court believe they would have paid this money, if they had not injured this man?

They make the statement in their Brief "Lost no cattle after July 21, 1905." Let us see what the record says:

Page 3882, one calf died in September, 1905.

Page 3867, February 5th and 6th, 1906, one cow and one calf.

So we see again defendants are mistaken.

Kreider states his cattle in 1904 and 1905 got sick and died from the *smoke*. (V. 10, 3880.)

Defendants quote Kreider as stating that the veterinarian told him his cattle died with smoke. Defendants' Counsel states the veterinarian stated to the Court it was tuberculosis, and name Dr. Faunt as so stating and give Record page 2365, V. 6.

Defendants are here either trying to deceive or are not acquainted with the record. They try to convey to the Court that the same veterinarian Mr. Kreider testifies told him it was the *smoke* afterwards came on the stand and swore it was tuberculosis—or Dr. Faunt being the *veterinarian*.

Mr. Kreider states, page 3880, “The doctors (not one but more than one) same around and said they died with the smoke. (V. 10, 3880.)

Q. How many did they examine?

A. Three or four, in 1904 and 1905. (3881.) There was an old Dutchman there. (Dr. Schwartzkopf,) There was two of them. *Dr. Faunt*, as the Record shows, as an Irishman, clearly showing that there were two different sets of veterinarians at Kreider’s at two different times; Faunt there in July, 1905, and Kreider had had only one death, and that, this particular cow, since April 24th, or the only cow he had die for a period of three months, and Kreider states at the time the *old Dutchman* was there they examined three or four. (V. 10, 3866.)

The Court can see clearly by the above testimony the Defendants were wrong.

They quote Dr. Faunt as stating on page 2365, V. 6, this cow of July 21st was suffering from tuberculosis.

Dr. Faunt on page 2365, V. 6, reports as follows: “July 21st Autopsied black and white cow, property of Frank Kreider, two miles east of Gregson; cow died on the 20th, (day preceding autopsy.) Found generalized tuberculosis and also arsenical lesions.”

“Q. When did you last have any of your cattle that died examined, *how lately?* (V. 10, 3881.)

A. The one that died before the last one (looking at book) July 21st.”

Does not the above question and answer completely explode the theory of the defense as to the veterinaries telling Kreider one thing and swearing on the stand to another? The first veterinarian examined three or four cattle. Said it was smoke. Faunt examined the last one and only *one*, and found *arsencal lesions* as well as tuberculosis. (2365, V. 6.)

From Defendants' Brief one might infer that the Defendants are trying to convey the idea to the Court that only tuberculosis was present here and no smelter poisoning, but couple all the facts together and we find exactly the same conditions on this ranch in 1904-5-6, as in 1902-3, when Defendants acknowledge the damage from the smelter.

MORGAN EVANS. Comp. Wit.:

Defendants state Morgan Evans in twenty years on his ranch could not make a success of tame hay (39952.)

Although Mr. Evans has raised no tame hay on his ranch, he always had sale for his hay prior to 1902 and states on page 3992 the cheapest he ever sold it was \$11.00 a ton and up to \$15.00 a ton.

Defendants state Evans' crop of 1905, 225 tons, (3996), but fail to mention the fact that in 1902 crop measured by the Company (and settled for) was 290 or 295 tons, showing the shortage of about one-third.

Defendants claim Evans admits a good crop before the smoke trouble (3997.)

Record shows as follows: (3997, V. 11.)

“Q. How much do you expect your crop is now, between 40 and 50 tons?

A. *It depends on the smoke, not so much there.*

Q. As a matter of fact, did you not get so far as *quantity* is concerned a pretty fair crop of hay last year?

A. I thought it was pretty good but not as good as I have had.

Q. Did you get as much last year as you have sometimes gotten from your land in years before the smelter was built?

A. Probably I did but there is a good deal of difference in seasons.”

(NOTE—Does the testimony, as above, taken from the record show what the Defense claims? *Not at all.*

Defendants state Evans has had no complaint from his hay. (3999.)

But Evans states on page 3998 his cousin, the man whom he had sold his hay to for \$11.00 a ton for the last two years, refused his hay; was shipping his hay from Bitter Root, in preference to taking the risk of my hay.

Here is a man who fed this hay for two years, made no complaint about it, but tells him positively dont want any more of it and refuses to buy it. *This is not a complaint on the hay but an absolute refusal to use it at all.*

Defendants again quote Mr. Evans admitting a fair crop in 1905 (4020.)

But Mr. Evans again states it to be 215 to 225 tons (4019) while he shows he cut in 1902, 290 to 295 tons.

Defendants quote Mr. Evans (3991) as having found a ready market for his stock and hay, (3991). in 1903 and 1904.

(NOTE—*Defendants skip, 1905.*)

See what the record shows on page 3991:

“Q. Do you find a ready market for your stock and hay in 1903, 1904 and 1905?

A. Yes, sir, I have sold stock and hay (I haven't sold any grain) all these years, *except this season*, I haven't sold any hay; *I have it there yet.*”

(NOTE—*Has sold none of his 1905 croy of hay.*)

“*I have tried, where I used to sell it, but, he said that he was feeding Company stock and did not want to take changes on the poison.*” (V. 11, 3991.)

Lost 3 horses in 1904. (V. 11, 3985.)

Lost 3 horses in 1905.

Lost 12 horses in 1903, and 25 cattle.

“In 1904 I lost a lot of calves; ten cows slunk their calves in six weeks. (V. 11, 3986.)

“Q. Did you lose any cattle in last year that you know of, in 1905?

A. In 1905, oh, I lost some in 1905, three or four.

Q. Were they old or young stock?

A. I did not have any old ones; *the poison killed all the old ones.*

I lost a horse in 1906, two weeks ago.

I never noticed like conditions in the valley prior to the Washoe Smelter.

I have seen like conditions at Swansea, Wales, where there is a copper smelter. That was in 1852 and 1853.

And the cattle there had the same symptoms they have on my ranch today.” (V. 11, 3988.)

Does this look like he is testifying to conditions in 1902

and 3? He states the same symptoms on his ranch *today*. Does *today* mean 1902-3?

Paid Evans \$7,000.00 in 1902 for damages which was \$1,700.00 less than their own appraisers appraised Evans' damage in 1902 and 1903. (V. 11, 4009.)

Defendants quote Evans as getting a good calf crop in 1904 and 1905 (4002.) Evans states he got 25 fine calves in 1904 (4002.)

(NOTE—Smelter shut in 1903 during the summer, so cows would naturally breed better in 1903 and have more calves in 1904. *In 1905 got twenty calves.*)

“Q. Then you got last year, 1905, about twenty calves from somewhere about twenty cows?”

A. *No. From the whole outfit, there was about—I don't remember, there must have been 35 to 40 that would have calved if everything was proper.*”

Evans states in 1904, ten cows slunk their calves in six weeks. (V. 11, 3986.)

Evans does not state he had a good calf crop but only states he got 25 fine calves in 1904, (had 35 to 40 cows) and says nothing whatever about the crop that year, but does state that in 1905 should have had 35 to 40 cows calve if things had have been all right, whereas, he only had twenty head.

Does this look like a good calf crop?

Sold his 1903 and 1904 crop for \$11.00 a ton. (3988.)

Mr. Evans states on page 3992 that \$11.00 is the cheapest he ever sold hay, years of 1903 and 1903 after the smoke, and on page 3973 he can't sell his 1905 crop to the men he formerly sold it to.

Defense states Mr. Evans' losses since 1903 have been

small. We have answered this above and show the exact conditions as to actual death.

We respectfully ask the Court to read carefully Mr. Evans' testimony as he is not a member of the Farmers' Association and might be called a referee witness.

JERRY RYAN, Comp. Wit.:

Defendants give Ryan's hay yield as increasing from 1890 when he got the ranch up to 1905, or increased from 125 tons in 1890 to 175 tons in 1905.

Mr. Ryan states 1902 was his best crop, page 4085, V. 11.

Mr. Ryan states that he put lots of manure on his land, four hundred loads of manure every year, "*but in the last year or so I can not make it pick up and get back where it ought to be.*" (V. 11, 4079.)

The Court can see by the testimony Mr. Ryan's crops *increased steadily from 1890 to 1902*, and since then has had no increase in his hay crop. Since 1902, only about the same amount. (4079.) Says he got about the same amount of crop in the last two years.

Ryan states the smoke is killing his tame grasses. Not so much of it. States the quality of his hay is not so good. (V. 11, 4079.)

Defendants state Ryan got 250 sacks of potatoes from three acres and all right, a pretty fair crop. (4089.)

Ryan states exactly as follows in regard to this crop: (V. 11, 4089.)

"I got about 250 sacks from this three acres. It is pretty fair. *I generally raise 100 sacks, I have raised as high as 200. I have raised as high as 225 sacks to the acre there.*"

(NOTE—Shows potatoes were not a normal crop in 1905 for this land.)

Defendants (608), quotes Ryan as having 200 tons of hay in 1906 (21588-21556.)

(NOTE—Or which would show an increase. Let us see what caused this increase.)

Mr. Ryan states hay crop in 1906 not as good as in 1905. (V. 54, 21539.)

(NOTE—When Mr. Ryan gave the yield in 1905 on his ranch as 185 tons, it was to the old original ranch which he had owned since 1890. On page 21556 he explains in his answer what seems to be a contradiction, or showing a greater crop in 1906, than in 1905.)

Ryan states he cut about 200 tons *on both places*. (V. 54, 21556.)

(NOTE—The Record shows he purchased other land adjoining.)

Defendants quote Ryan as stating his hay crop in 1906 “as far as looks go is all right.” (V. 54, 21557.)

Ryan states (Record.) (V. 54, 21557.)

“Q. Pretty good hay.

A. Pretty fair to look at.

Q. What?

A. Apparently to look at but *not to feed*.

Q. So far as looks is concerned the hay is all right but it has not got the feeding value, is that the idea?

A. That is the idea.

Q. When it is growing in the fields and a man stops and looks at it, it looks good does it?

A. Yes, *but* if you will examine it you would see the spots in the clover. You will see where it is posoned; you examine it close and you are used to this business. You can detect it pretty easily.”

Does not what Mr. Ryan says above in question and answer form convey an entirely different state of facts, from the statement of Defendants? They only give a part of Ryan's testimony in regard to the *looks* of the hay.

Defendants states Ryan states his lamb crop in 1906 to be about 65%. (21540.) This part of this clause is the testimony of Ryan.

Defendants' Counsel make the further statement, and it is *only a statement* of Counsel, that the crop was 111%.

Ryan, 1300 sheep, April 1, 1906. (V. 54, 21547.)

Lambs born, 182, prior to April 21, 1906.

Lambs died, 112, prior to April 21, 1906.

Left alive, 70, prior to April 21, 1906.

Ryan states had 550 more lambs from sheep after they were moved away, or a total of 620 live lambs from 1300 sheep; or 732 lambs born from 1300 sheep for the season of 1906. (V. 54, 21456.)

Per cent of lambs born, 56%.

Per cent of lambs which lived, less than 50%.

Again we see the direct of the witness supported by his cross, and the Defendants' Counsel's statements shown to be untrue where they claim 111% increase in lambs. Mr. Ryan's cross-examination simply shows that when he gave his per cent of increase at about 65% in his direct examination, he was more than fair to the Defendants.

Defendants quote Ryan (21545, V. 54,) admitting to Dr. Gardiner that he had 125% crop of lambs in 1905.

The above statement is true, and refers to the lamb crop of 1905; in order to explain this we will take up Mr. Ryan's testimony on Direct given in February, 1906.

The Court must take into consideration first that these

sheep were bought outside of the Deer Lodge Valley in October, 1904, or (4095, V. 11,) Mr. Blum, who resides at Gold Creek, Montana, or about twenty miles north of Deer Lodge City and out of the smoke zone. (See page 12280, V. 31, for residence of Blum) and were only pastured a little while in October in 1904, (4097, V. 11), and were fed hay that winter, and were bred shortly after coming to the valley, (period of gestation in the sheep about four months) and doubtless before they were much affected by the smelter fumes, and Mr. Ryan's losses between October, 1904, and May, 1905, show that his sheep were least affected between the time of breeding and the lambing season, or from October, 1904, to May 6, 1905, as his (4058, V. 11) losses in sheep were only sixteen head (for this period from October, 1904, to May 2, 1905.) and this loss began in January, 1905.

Ryan sold these sheep at a sacrifice. "I did not dare bring the sheep back to the valley. Everyone of them would die." (V. 54, 21549.)

Mr. Ryan states he lost 289 of these lambs between June or docking time and February 27, 1906, *having left alive on February 27, 1906, 741 lambs out of 1030 born and docked in 1905, or a loss of 289 lambs from May 6, 1905, to February 27, 1906. Also between that date about 95 sheep, as shown by his testimony on page 4124, where he states he lost about 400 sheep and lambs to date.* (V. 11, 4099.)

289 lambs lots and 16 sheep lost prior to May, 305.

305x95-400, total loss given to date of February 27, 1906.

Mr. Ryan states did not sell *one* of these lambs, meaning of 2030 docked. (V. 11, 4098.)

These sheep conditions simply show as follows: that sheep will do fairly well for a short time in the valley and ta the time Mr. Ryan bred and lambbed this bunch of sheep the first time they had not been there long enough to be seriously injured. In th lambing season of 1905 out of 1100 lambs born he saved 1030. In the lambing season of 1906 out of 182 lambs born before their removal from the Deer Lodge Valley in April, 1906, he lost 112 and only saved 70 alive out of 182; while in 1905 when the sheep had only been *in the valley a short time and fed hay*, he saved 1030 out of 1100, which shows sheep will not breed well or do well in the Deer Lodge Valley.

Defendants show that Mr. Ryan bought 880 sheep in the valley in fall of 1904 and sold the sheep for \$7,250.00 in July of 1906: and claims he made about 100% profit. (V. 54, 21548.)

Let us look into this *profit* a little. Mr. Ryan states he sold these sheep and the wool for \$7,250.00 and that *he sold the sheep for \$2.50 a head and sheep were worth \$4.00 a head at that time, or July (after shearing season.)* (V. 54, 21548.)

Had over \$3,000.00 worth of wool, leaving \$4,250.00 for about 1900 sheep and lambs. (V. 54, 21549.)

Suppose the sheep originally bought cost Mr. Ryan \$4.00 a head, or \$3,520.00; we have left \$3,740.00 from which must be deducted the cost of feeding these sheep and their care from the time he bought until he sold them, or more than sufficient to cover the increased price, but in order to save himself from *further* loss he had to take them from the Deer Lodge Valley.

Does the Court believe a man will sell out a business

which is paying at the rate of 50% a year profit and leave his ranch without stock? Does not Mr. Ryan's losses tell why he quit? And the Defense has not, nor have they attempted to show that these losses in sheep and the loss in breeding did not occur, so Mr. Ryan's statements are undisputed on this point.

Defendants quote Ryan, page 4048, V. 11, as testifying in complainant case in chief that his cattle refused breeding pretty near all together. When he appeared again on rebuttal (Record 21559, V. 54) he stated every cow, out of 15 on his ranch, was in calf when he was on the stand before but states he did not know they were in calf at that time. And Defendants quote Mr. Ryan's contradictory statement, and state that shows the worthlessness of the farmers' testimony as to their cows and mares not breeding.

In order for the Court to see the exact statement of Mr. Ryan, we give the testimony in question and answer and believe that the honesty of this witness will be clearly shown; Mr. Ryan states on page 4049, V. 11, he only got four calves out of twelve cows in 1905.

(NOTE—Does not this show lack of breeding?)

"I bought four head within the last year. None of my own had calves." (V. 11, 4049.)

(NOTE—Only the ones he bought calved. Was not Mr. Ryan justified under those conditions in his statement that his cattle failed to breed?)

Ryan's testimony, Record 21660, V. 54.

"Q. Now then on page 4048, V. 11, this was on your direct examination (in February) you were asked this

question: 'What about the cattle? A. They refused breeding pretty near altogether.'

A. That is correct.

Q. Is that right?

A. That is correct.

Q. And at that time you had 15 cows in calf on your ranch, out of 15 cows?

A. I didn't know they were in calf at that time. (V. 54, 21560.)

Q. You didn't know they were in calf?

A. No, not at that time in February. It takes a philosopher to tell when them smokers are with calf. They can cover it."

"Q. *How many did you get altogether?* (V. 54, 211551.)

A. *Five or six. Five living calves out of fifteen cows, and one colt out of nine mares.*"

Five living calves, six dead, and four abortions. (V. 54, 21551.)

Defendants state Mr. Ryan gave no stock losses in 1904-5.

(NOTE—Defendants must have overlooked Mr. Ryan's sheep loss in 1905, or else they do not class sheep as stock.)

Complainant on his *rebuttal were confined by the Court in regard to stock losses to dates between April 15th, 1906, and the time of testifying in rebuttal, and any questions to what occurred prior to April 15, 1906, were not allowed, but Mr. Ryan's stock loss from April 15, 1906, to January 7, 1907, while small in numbers is large in per cent; ten calves out of fifteen lost (6 born alive and died and four aborted) or loss in calves 66 2-3% ; or taking number of*

cattle 25, adding 15 calves which should have been born alive equals 40 cattle—loss of 10—or 25% of herd.

18 horses, three died, or a loss of 16% on horses in actual deaths of stock living, and only receiving one colt from nine mares, where he should have gotten at least seven colts, as the normal amount, or a loss of as seven to one.

WM. PARROTT, Comp. Wit.:

Defendants state Parrott gives no loss of crops or stock. Never mentioned his crops. States Parrott had five horses and seven cattle; no losses in 1905 or 1906. In 1904 lost one horse out of twelve.

Defendants give no page of the Record to substantiate any of the above statements. (V. 11, 4135.)

Parrott states owns two hundred acres of land.

Principal crop hay.

Has five horses and is keeping them up in the barn. (V. 11, 4136.)

When out on the pasture noses began to get sore, *smoked*. (V. 11, 4126.)

Joseph Silver brought some cattle from Divide to feed on my ranch. Were there several weeks. Some of them died. They were then taken back to Divide. (V. 11, 4137.)

Silver's cattle were weak and poor and two or three died. (V. 11, 4138.)

Has kept his horse up ever since 1903, or before the stack was built. (V. 11, 4140.)

Has only kept two cows in the last few years. Takes them home to milk every night and feeds them in the corral.

In order to show the conditions on Mr. Parrott's ranch we will have to give here the testimony of Mr. Joseph Silver, the man who did have stock on Mr. Parrott's ranch

and whose brother was Mr. Parrott's tenant in 1904.

Joseph Silver lives in Butte. Is acquainted with Deer Lodge Valley. Is in the stock business at Divide, Montana, (fifteen mles from from Butte.) On January 2, 1905, took 65 cattle and four horses to Stuart in Deer Lodge Valley, Parrott's ranch; *they were in very good condition when taken there.* These stock were all young except one horse. (V. 11, 4242-43.)

Kept them there until February 22, 1905. *I took them back to Divide because they began to die. Five died on the Parrott ranch and the rest were in very poor condition (only kept them there fifty days).* They were scouring and their lips wer sore. They did not shed off like the other cattle. It (the hair) just fell off in a bunch and some of them today (February, 1906, about one year after their removal from the valley) have no hair on in spots, and the hair is off on the trail, and no hair ever growed there. (V. 11, 4245.)

Four cows lost their calves while they were at Parrott's *and five lost their calves right away after they got back (to Divide) and some of them, the cattle, died after they got back too.* They were in such shape I could not save them. One I kept in the stable three weeks and fer it on *mush* after it got back but I could not save it. After they got back to Divide it kept me attending to them pretty close to keep them from dying. (V. 11, 4245.)

I took thes cattle personally to Parrott's ranch and also took them away again.

While the cattle at the present time *appear to be fat, I don't believe they are fit for sale.* (I haven't sold any) *I butchered two and found they wer not fit;* in one of them

about a quart of matter in the liver and in my opinion they are not fit for sale. (V. 11, 4246.)

Four died after I got home, and five lost their calves.

(NOTE—Silver's losses from 65 cattle while on Parrott's ranch and from the result of being there as follows:)

Five died at Parrott's ranch, four cows aborted Parrott Ranch.

Four-ninths died at Divide, five-ninths cows aborted at Divide.

Loss in per cent of grown stock for fifty days, 14%.

Of the four horses two showed sickness when on Parrott's ranch. One died after taking to Divide. Loss in horses 25%. (V. 11, 4246.)

Mr. Silver nor Mr. Parrott give the yield on the ranch in hay. But Mr. Silver states page 4256, "Shipped two cars of hay from the valley. Could not sell it. Had to take it back, for the people would not pay for it. (V. 11, 4256.)

This hay I tried to sell was shipped from the valley prior to my moving the cattle back to Divide. (V. 11, 4257.)

I fed the balance of ths hay to my stock but mixed it with other hay, not from Deer Lodge Valley. Has some of this hay left two months ago (or ten months after shipping.)

Went to Defendant Company and presented a claim for damage to my stock before removing from the valley so they could investigate for themselves. (V. 11, 4260.)

HENRY HOFFMAN, Comp. Wit.:

Defendants' quote, page 52, Race Track station in 1904 cut 160 tons of hay (4159.) In 1905 (4151) cut over 250 tons from less than 250 acres. (4164). Hay crop good.

Mr. Hoffman states in 1904 he rented his ranch on shares and *his share* of the hay was 160 *odd tons*. (V. 11, 4151.)

(NOTE—As ranches are generally rented for one-half of the crop, Mr. Hoffman's crop doubtless in 1904 was about 320 tons, of which he got one-half or about 160 tons.)

Defendants, (Record 4151.) Sold 196 tons of his hay crop in 1905 on the ranch at \$5.00 a ton.

Hoffman states on page 4152, prior to 1902, hay never sold for less than \$7.00 to \$7.50 a ton. (V. 11, 4152.)

It is true Hoffman sold a small amount of hay at \$7.50 a ton in 1905 but states it was the best he had on the ranch, green timothy. (V. 11, 4162.)

Hoffman, page 4145, V. 11, has 319 acres of land, about 250 of which is in hay, all tame hay except about fifty acres and that is mixed tame and wild hay.

"I cut my tame hay separate and cultivate it separate." (V. 11 4159.)

We put in the above to show the class of hay Mr. Hoffman raises, mostly tame hay, and was sold for \$5.00 *a ton on the ranch, with a railroad station on the ranch, and a freight rate of about \$1.00 a ton to Butte or Anaconda; baling \$2.25, loading 50 cents, freight \$1.00, or \$3.75 plus \$5.00,—\$8.75, the price F. O. B. Butte or Anaconda. Hay of the same class from outside the valley selling for about \$14.00 a ton in Anaconda in 1905. See Conyne's testimony and summary of prices in this digest, selling for \$5.00 a ton*

Defendants say Hoffman's cattle look all right at present (February, 1906.)

(NOTE—Only has six head.)

Defendants state Hoffman had 38 cattle in 1904 and 10

horses. 38 cattle and 10 horses in 1905, 6 cattle and 11 horses in 1906. (4157-4169, V. 11.)

Defendants give Hoffman as having 38 cattle in 1905. It is true he had them in 1905 but how long in 1905? Hoffmaa states: "Last spring (*spring of 1905*) I sold part of them that was anyway in god shape to Nick Bielenberg for (4170) \$14.00 or \$15.00 a head, calves, yearlings and two year old steers coming three years. (V. 11, 4169-70.)

The remainder I sold this fall to the Montana Packing Company, "for \$23.00 a head. These were all beef cattle." (V. 11, 4171.)

"Had to get out o fthe cattle business. Was losing money every year the way I had been feeding them." (V. 11, 4173.)

(NOTE—The highest price received for these cattle, \$23.00 a head.)

Hoffman states thes wer god cattle; paid big prices for some of them. Paid as high as \$55.00 a head. (V. 11, 4169.)

(NOTE—The highest price paid \$55.00, the highest price received, \$23.00 a head; while cattle were some cheaper in 1906 than in 1903-4, no such depreciation in the price as this. The above simply shows that Hoffman was compelled to sell to avoid loss from the smoke.)

Hoffman states: (His horses) "I kept them up from the fall just as soon as the grass begins to get dry and they get affected, I put them in the corral and feed them. (V. 11, 4149.)

Had to put up stock and feed October 1st. V. 11, 4177.)

Keeps his horses on the *east side of the river up in the hills* in the summer, (out of smoke zone) ten miles from the ranch. (V. 11, 4149.)

The Court can see why Hoffman has no stock loss. Sold his cattle and keeps his horses out of the Smoke Zone in summer and feeds in corrals most of the time. This is the last ranch north of the Farmers' Association *in that particular vicinity.*

Defendants say Hoffman reports no stock loss in 1906, *which would be in the last two months.*

Hoffman states on page 4173, V. 11, "One mare slunk her colt three weeks ago."

Hoffman, page 4150, V. 11, states: "Lost one horse after 1902, on account of the smoke. (V. 11, 4150.)

Hoffman states he first noticed smoke conditions in the fall of 1902; horses got sore noses.

Did not notice any effect on his vegetation until the fall of 1904 and same fall of 1904, horses got sore noses. (V. 11, 4148.)

It was the same with the horses in fall of 1905, sore noses. (V. 11, 4150.)

The Court will see by Mr. Hoffman's testimony he had no trouble from 1902 to fall of 1904 when his horses again developed the sore nose.

"Settled with the Defendants in July of 1904 for all damage to date." (V. 11, 4179.)

Mr. Hoffman states he noticed no injury at all at his place in 1903, and doubtless believing the new stack was a success, settled *in July of 1904*, but states again *in the fall of 1904-5* the injury was apparent. Came at about the same season of the year in 1904-5 as it did in 1902, or fall of the year. *Works closed in the fall of 1903 when he had no injury. (V. 11,4149.)*

Mr. Hoffman's testimony shows his injury principally in the fall.

THOS. ELLIOTT, Comp. Wit.:

Defendants state Thomas Elliott had a pretty fair crop of hay in 1905, cut about 800 tons. (4329, V. 11.) Again states cut 800 tons in 1905 (4347, V. 11.) Thinks he cut more than 392 acres of hay land in 1905 but does not know how much. Pretty fair crop of hay (4348, V. 11.)

Elliott states the hay does not have the feeding quality it did before the smelter was built; "it does not fatten cattle so quick and it takes more of it. We have to feed longer than we did." (V. 11, 4330.)

Elliott on Cross-Examination states he has 800 or 900 acres of hay land and states positively he has more than 700 acres. (V. 11, 4349.)

States he cut more than 392 acres. V. 11, 4348.)

"Q. Well, in wild and tame hay I will ask you if you cut more than 392 acres last year.

A. Yes, sir, I think so."

States he cut in 1906 the same as in 1905, between seven and eight hundred acres. (V. 55, 21788.)

"Q. How many more do you think? (V. 11, 4348.)

A. I don't know."

But Elliott states he cut about 700 or 800 tons."

Above statement in the testimony shows the Defense are not treating the testimony of this witness fair in their Brief. Mr. Elliott states he has between eight or nine hundred acres of hay land, but did not cut it all in 1905, and because Mr. Elliott will not state to an acre or so how much more than 293 acres he cut in 1905, the Defense

would have the Court construe Mr. Elliott as only cutting 392 acres.

Defense states Mr. Elliott was trying to irrigate 700 to 900 acres of land with 200 inches of water (V. 11, 4346.)

Elliott states he owns 500 inches of water and can irrigate 1000 acres with it, *and the lowest* he had in his ditches *at any time was 200 inches and then only for about two or three weeks* was it that low, in *August to September*. (V. 11, 4345-47.)

The Court is well aware of water conditions in Montana. That there is no scarcity of water in the spring of the year when large quantities are required for the irrigation of hay, which is Mr. Elliott's principal crop, and that before the time set by Mr. Elliott for the low water in his ditches in the month of August, the hay harvest is on and the crop made, and so no irrigation is needed after August for any class of hay except alfalfa, and when the Defendants claim Mr. Elliott only had 200 inches of water they are misquoting the Record, as is shown by Elliott's testimony.

Defendants state that in 1906 Elliott had 650 tons, or more than normal amount of hay (V. 55, 21785.)

Elliott states his hay crop was 150 to 175 tons short on the same ground from which he cut hay in 1905. (V. 55, 21774.)

(NOTE—Does this look to the Court, *as Defendants' state, more than a normal crop?*)

States he cut same amount of land in 1906 as in 1905, or seven or eight hundred acres. (V. 55, 21788.)

The Defense admits they have the measurements of the land Mr. Elliott cut but they fail to put a witness on the stand to dispute Mr. Elliott's statement.

Defense states Mr. Elliott's hay crops estimated (Record 21832.) (V. 55, 21785.)

How estimated, let us see. Elliott on page 21785, V. 55, states he puts up his stacks just about so with the same stacker, and the same man put them up (in 1905 and 1906) and there is not a difference of more than a ton or two in the stacks. On page 21786, V. 55, Elliott states he is six stacks short in 1906 and estimates it at 150 to 175 tons.

In order for the Court to understand Mr. Elliott's testimony as to the quality and quantity of the crops, it will be necessary to show how his grain crop did now as compared with the time prior to the operation of the Washoe Smelter.

Elliott states prior to the operation of the Washoe Smelter a fair yield of oats in his neighborhood was from 40 to 50 *bushels to the acre* and has been that on his place. (V. 11, 4331.)

Since the operation of the Washoe Smelter has been from 20 to 25 *bushels*.

(NOTE—A decrease of about one-half, which decrease as shown, commenced with the *operation of the smelter*.)

Had noticed the change in the vegetation after the smoke had visited his place; the hay, that streaks of it would be brown; Oats turned white after the smoke struck them.

Mr. Parker, Defendants' witness, states the only time he noticed damage on his ranch it turned the oats white.

Oats did not grow much after the smoke struck them. (V. 11, 3408.)

Defendants Quote Elliott as stating hay and grain crops looked good and had a good stand in 1905. (Record 4360.)

“Q. Now, as a matter of fact, Mr. Elliott, how did the crop look last year? (V. 11, 4359.)

A. I said it *looked* fair.

Q. Good.

A. It looked good, yes. (V. 11, 4359.)

Q. The grain crop looked good too, did it not when it was growing?

A. It *lodked* well, yes, sir.

Q. And you expected to have a pretty good crop?

A. Yes, sir.

Q. You did not get as much wheat and oats as you expected from the stand?

A. No, sir, I did not.

Q. But it grew splendidly?

A. It grew first rate. We had considerable rain last year and it grew first rate.”

From twenty acres in 1905 we got 510 bushels of gran. (V. 11, 4354.)

This grain was *sowed on potato land and should have yielded 35 to 40 bushels to the acre, and potato land always yields oats better than other land.*”

(NOTE—Here we see Elliott had *about 25 bushels to the acre in 1905* when he should have had *thirty-five to forty*, and the *Defense overlooks entirely the yield of grain in 1906. Let us see the result of the 1906 crop.*)

Had in 53 acres of grain in 1906. Had 552 bushels. (V. 55, 21773.)

(NOTE—*Only ten bushels to the acre.*)

“This grain was raised on summer fallowed land. I measured it, there was 53 acres. (V. 55, 21776.)

This land was fertilized. (V. 55, 21777.)

The soil is good. I never found the bottom of it, and I plowed it seven or eight inches deep.

This grain was one-half in oats and one-half in wheat, (V. 55, 12778.)

The Defendants insist on the figures of Elliott’s measurement of the land in grain in 1906 being furnished at a later date, and they are handed to them later and must have been correct, as the record does not show their introduction to the contrary. (V. 55, 21802.)

Defendants quote Elliott’s stock losses as practically nothing in 1904, 500 cattle and 65 horses; says lost one or two. 1905, (4396, V. 11) 50 horses. Lost 10 cattle and two horses. 1906, 375 cattle, 60 horses; and losses at all (4332, V. 11.)

Elliott’s testimony shows the condition of his stock and deaths among them as follows:

Elliott had 518 cattle and 66 horses in 1902 and spring of 1903. (V. 11, 4322.)

Cattle and horses on the ranch March 1, 1905, about 300 head. *My horses are in a worse condition now than they have been for some time. All have sore noses (4329, V. 11.)*

The cattle look fair, (now they are getting all the hay they can eat) most of them. Some of them don’t look so well. Some will never get fat, I don’t think. (V. 11, 4328.)

When the cattle get sick, they stand around, drool around. (V. 11, 4332.)

Hair stands up, looks rough, don’t look as they used to,

don't grow as well; *they scour, not a natural scour, has a blue cast, never noticed it before. Have lost in 1905 about 25 head.* (V. 11, 4332.)

None of the common diseases among cattle. (V. 11, 4333.)

I can't keep cattle to make a profit because they don't breed well. Don't do well. Don't grow, nor the horses either; some horses don't breed at all hardly. (V. 11, 4334.)

I can't keep the same stock under the present conditions at all, because they don't do well. Don't do well on grass; don't grow well. There is no profit. Can't make a dollar (even on thoroughbreds), like you used to. (V. 11, 4334.)

Prior to the smelter it was profitable to keep stock. Now it is not. (V. 11, 3692.)

Prior to the smelter, if a man *cleared \$4000.00 a year* he would *be doing bad* on my ranch; stocked as it is. *At the present time I am not making any profit.*

Stock are not increasing, they are going down hill. (V. 11, 4336.)

We give stock better care, feed longer, feed more, than four or five years ago.

A year like this, 1905-6, would hardly have to feed at all, a few years ago." (V. 11, 4330.)

(NOTE—Meaning not until after the Washoe started)

Could feed 500 cattle on my place." (V. 11, 4341.)

"Have handled cattle for forty years here. (V. 11, 4337.)

(NOTE—If conditions were the same as prior to 1902, and Mr. Elliott did have 518 head of cattle and

66 horses in 1902. See Elliott's release to Defendant Companies in 1902 (4322, V. 11.)

Has 3800 acres of land. (V. 11, 4343.)

Sold 100 head cattle in 1905. (V. 12, 4394.)

Sold 100 head cattle in 1904, not over that. (V. 12, 4398.)

Have lost from 50 to 75 cattle since September, 1, 1903. (V. 12, 4398.)

Lost two horses in 1905.

Did not keep track of the horses I lost in 1904. (V. 12, 4400.)

Sold something over 200 cattle since September 1, 1903. Have between 250 and 300 at this time (March, 1906.)

Had a little over 500 head prior to the smoke. (V. 12, 4401.)

(NOTE—1098, to be correct, see release to Defendants.)

(NOTE—Here is an interesting story of the stock business in the valley. *Can not raise enough stock to keep up his original herd.* The above cross examination of Mr. Elliott shows, taking the amount of stock he sold in 1903-4-5 to be about 200 head, consisting of cows, calves and steers, deducting the 200 sold from the 500 he had in 1903, leaves 300, the amount he has now, showing that Mr. Elliott's *loss in death and failure to breed has been the entire increase in his herd since 1903*; taking all he has sold and all he has at the present time and adding them together, or 200 sold plus 300 on hand, equal 500 head, or the amount of cattle he had in 1903, *showing no increase in a herd of cattle from September 1, 1903, to March 1, 1906*; clearly showing Mr. Elliott has kept and fed this herd of cattle for two years without any increase in numbers, and under these conditions, at a total loss of all feed and care given this stock. A herd of

cattle under normal conditions, should double in numbers in the above length of time.)

See what his horse herd shows: Had 66 head in 1903; in 1906 had 60 horses. No increase at all. Has six less in 1906 than in 1903. There is no place in this record showing Mr. Elliott sold one horse in this period.

Does not the testimony in regard to this man's live stock show, and show clearly, that the live stock industry of the valley is destroyed, *as here is two breeding herds, one of cattle and one of horses, where the deaths exceed the increase in these herds. Shows actual death among his cattle of from 50 to 75 head, instead of 10, as claimed by Defense, since September, 1903.*

Further, Mr. Elliott's testimony *shows that he can only keep about one-half as many stock on his ranch as he did prior to the operation of the smelter.*

The testimony of Mrs. Eliza Elliott, wife of Thomas Elliott in regard to the ranch and stock, is not mentioned by Defense in their Brief but we will give portions of it where it bears on the point raised in Defendants' Brief.

MRS. ELIZA ELLIOTT, Comp. Wit.:

Joint owner in Elliott ranch and stock. (V. 11, 4287.)

First noticed damage after operation of the Washoe Smelter in fall of 1902. (V. 11, 4288.)

Cattle began to get sick.

Horses' noses got sore; mares slung their colts; cows slunk their calves.

Lost fifty head of horses and cattle from the effects of 1902.

Defendants pail \$6,509.50 for damages to stock and crops in 1902-3. (V. 11, 4322.)

Lost quite a number of those 1902-3 cattle in 1903. (V. 11, 4291.)

In 1904 only lost a few, not as many as in 1902-3.

Lost a good many in 1905. *There was more than ten or fifteen brought to the house, skinned and burned in a pile.*

Our stock has been getting worse every fall. In the fall we notice it the worst. (V. 11, 4292.)

Horses did not have sore noses in 1904 but in 1905; and all of them in 1906.

The conditions of the horses and cattle are the same in 1905-6, as to symptoms before described.”

(NOTE—Mrs. Elliott described before their symptoms in 1902-3, which the Defendants admitted were caused by smoke and paid for.)

“We have lots no stock in 1906 but have had abortions among the cows.” (Testifying February, 1906) *so only two months of 1906 have passed.*

These symptoms were not seen prior to operation of the Washoe Smelter. (V. 11, 4293.)

We are feeding our cattle and horses now. Prior to the operation of the Smelter we never thought of feeding unless the pastures were eaten bare, or ground covered with snow. At the present time there is plenty of grass in our field that stock could get.

Can't pasture the grass at present after it gets dry; stock gets sick; look like they would die. (V. 11, 4294.)

Since Smoke Period our grass is brown about one-half way down and is perfectly dry before it is cut, clover looks like something had burned it.

Bought no stock since the smoke poisoned it, (the grass)
(V. 11, 4295.)

No sickness before smoke.

Cattle can not live on the grass in the field, or out of it.

Prior to the smoke, cattle ran in the hills until Christmas and they would be fat.

Calves born during this smoke period are very small and have to stay with their mothers two or three months longer than they would to be ready for the market. (V. 11, 4296.)

They are not good cattle. They don't grow very fat and are small."

(NOTE—W. T. Elliott states he sold most of his calves for \$8.00; got \$10.00 for a few of the best of them.)

"MacCallum & Cloutier would not buy hay of us. (V. 11, 4302.)

Other years cattle would live without feed where we are now feeding hay. (V. 11, 4314.)

We have to feed nearly all of our hay now. We have to commence feeding in the early fall and feed so late in the spring. The cattle cannot live on the pastures. Plenty of grass there but they wont eat it. (V. 11, 4326.)

We never fed prior to the Washoe Smelter as long as there was as much grass as there is in the valley. (V. 11, 4327.)

Never fed after Christmas and not then unless grass was covered with snow, and as soon as the snow was gone they fed in the fields.

We have no more hay than is necessary for feed under present conditions.

(NOTE—Have about 300 stock. Take 800 tons to feed. Almost three tons to the head, while prior to the Washoe Smelter, for this class of stock from $\frac{1}{2}$ to one ton to the head sufficient.)

N. J. BIELENBERG, Comp. Wit.:

Defendants quote Bielenberg. Largest hay crop in 1898. Cut 800 tons 1905, between 700 and 800 tons from 600 to 700 acres. Hay land (4430, 4598, V. 12.) Thinks hay crop of 1906 sixty to seventy tons short of 1905. (21503, V. 54.)

Bielenberg states 800 tons is not the largest crop he ever cut; staes increased it 50 tons a year more after that until damaged by the smoke. (V. 12, 4061.)

Bielenberg states his hay crop in 1905 not as large in bulk as in former years and not as heavy in weight. The hay is very light (in weight) when the leaves are dead as they are now. (V. 12, 4431.)

The feeding qualities of the hay is bad. It takes a great deal more to satisfy an animal. It hasn't got the nutriment. They don't fatten on the hay. They scour too much.

The feeding quality of the Deer Lodge Valley hay was as good as any in Montana prior to 1902 in the Smoke Period. (V. 12, 4432.)

Bielenberg handled cattle for 40 years in Montana. (V. 12, 432.)

Prior to the Smelter we never fed our horses, we worked in haying; would turn them out at night and get them up in the morning and work them without giving hay or grain, and in the evening turn them on the grass the same as we did in the Big Hole. (V. 12, 4445.)

Now we keep them in the stable and feed them all the

grain they can eat to keep them up—and they don't keep up.

Fed 20 to 25 pounds of oats a day to the horse in haying in 1904 and 1905. (V. 12, 4444.)

There is a dust in the hay; it is so fine you cannot see it, and it bothered my men in cutting the hay. The men running the machines kicked about the dust in his eyes; got a wash from the doctor for them. (V. 12, 4462.)

One of the men stacking hay quit. I noticed it in my eyes when around the stack. (V. 12, 4463.)

Never noticed the burnt leaves or burnt crops prior to the time the smoke came upon the land. (V. 12, 4428.)

(NOTE—About all the defense attempts to show about Bielenberg's hay crop is that it is normal in yield as compared to the general average as given in a government bulletin, and they take the *wild hay average* at that, when the evidence shows Mr. Bielenberg's hay is *mostly tame hay and wild hay mixed with clover.*)

Mr. Bielenberg's evidence clearly shows his hay crop is decreasing as well as the feeding value of what he does produce. Mr. Bielenberg's testimony in regard to the feeding of horses worked in haying at the present time, as compared to the way they were fed prior to the smoke period, clearly shows the injury to the forage of the valley.

Another fact for the Court to take into consideration is that Bielenberg's ranch is one of *the finest ranches in Montana and not an average ranch* and to apply average yield to a ranch of this class is unfair.

Defendant quotes Bielenberg's crop of grain in 1905, "a good crop; a very good crop." (V. 12, 4580.)

(NOTE—In order for the Court to see the exact conditions of the grain crops on Bielenberg's ranch it will be necessary to give a more detailed account of it than defendants have given in their Brief.)

After the smoke came upon my land, on my oats field in front of my house, *two-thirds of it was white*; could not see any frost; *from four to five inches of the tops of the oats were white*. It got that way during the night. *On my alfalfa, on the bench above my house, the leaves had turned white or yellow or cream color; just part of it*. It was not all over it; the upper ends of both fields, you might say. (V. 12, 4424-)

Always had grain to sell prior to the smoke. But since the smoke have to feed it. Did not use to feed any grain on the ranch prior to the smoke. (V. 12, 5477.)

The piece of ground I am now farming will raise probably three times as much (per acre) as any bench land. This is the fourth year I have been raising grain on this land. (Formerly clover.) (V. 12, 4578.)

The Court will doubtless remember examining this oat crop in 1905 and remember the empty hulls.

Last year the crop of grain I got was a good crop, *but* it is not as good as it ought to have been. (V. 12, 4580.)

The yield on this ground was about 70 bushels to the acre *but have raised on this same ground from 120 to 130 bushels to the acre, and have done so at different times*. *This land has been farmed off and on since 1865*.

This is as good land as there is in the United States. While seventy bushels of oats is a good crop, *it is not good crop for this land*.

Defendant Brief states (4580-1, V. 12.) Threshing re-

turns show 1852 oats and 262 bushels wheat or 26.2 bushels of wheat to the acre; 1852 bushels of oats or 25 bushels to the acre. Same ground in 1906 went 50.4 bushels of wheat to the acre and 46.25 bushels of oats to the acre. (V. 54, 21530.)

(NOTE—The manner in which the defendant put in their yield or grain on this ranch shows as follows: Oats went 25 bushels to the acre, and wheat 26.2 in 1905. In 1906 oats 46.25 and wheat 50.4 bushels to the acre, and is done doubtless to try and bolster up the evidence of some of the defendants witnesses who testify to *good looks* of the crops in 1906, and to try and further show crops are increasing in the Valley. *The above statement of the Defendants as to Mr. Bielenberg's crop returns is not true.*)

Mr. Bielenberg gives on page 4581, V. 12, amount of acres in oats in 1905 at from (4581) 25 to 26 acres, and according to threshing returns 26 acres in oats 1905. Total yield oats 1852 bushels *70 bushels to the acre.* (V. 54, 21502.)

Same amount and same ground in oats in 1906. (V. 54, 21505.)

26 acres in oats in 1906. Total oats 920 bushels. 35.4 bushels to the acre, a decrease of $\frac{1}{2}$ in 1906 over 1905. (V. 54, 21502-5.)

The record shows exactly as complainant's claim, a decrease of about $\frac{1}{2}$ in Mr. Bielenberg's oat crop as compared with 1905, *and not as Defendants' Brief shows, but directly the opposite.*

BIELENBERG'S WHEAT CROP.

1905. 10 to 12 acres 262 bushels taking 10 acres as a basis of yield, gives 26.2 bushels in 1905. (V. 12, 4580.)

I had in 8 more acres of wheat in 1906 than in 1905, which would make the acreage in wheat in 1906 18 to 20 acres, instead of 10 acres as used by defense in computing their yield of wheat for 1906. Defendants should, at least, have used 18 acres as the minimum. (V. 54, 21505.)

Bielenberg states his total wheat crop in 1906 was about 500 bushels which gives us a yield of 27.7 bushels instead of 50.4 as given by the defense. (V. 54, 21505.)

	Bushels.
Total grain yield oat and wheat 1905.....	2114
Total grain yield oat and wheat 1906.....	1420
	<hr/>
Decrease in 1906	694

In 1906 had the same amount of land in oats and eight acres more of wheat than in 1905. (V. 54, 21506.)

An average crop of wheat on my land 40 to 45 bushels. (V. 12, 4639.)

The record actually shows that Bielenberg in 1906 *had 694 bushels of grain less than in 1905*, and the record also shows he had in 8 acres more land in grain, which *disputes clearly and conclusively all statements or inferences of the defense.*

Defendants brief (21527, V. 54) crops were fairly good in the valley in 1906.

Bielenberg actually states as follows in regard to crops in the valley in 1906. (V. 54, 21527.)

“Q. It was a poor crop in 1906.

A. I would not say it was a poor crop in 1906. No.

Q. You did say the crops were everlastingly poor when you were on the witness stand before didn't you?

A. No, sir. I did not.

Q. Were they good?

A. The crops were fairly good, *but not as good as what they used to be, I say.*

The Court will notice that defense again splits and answers what is beneficial to themselves and discarding a portion, *which portion that is discarded would change the maining of the answer.*

W. C. STATON, Comp. Wit. :

Defendants' Brief gives Staton's hay crop in 1905 as 724 tons from less than 470 acres. Got 432 tons off less than 300 acres on the old ranch and 292 tons from 170 acres on the upper ranch; making altogether 724 tons from less than 470 acres,—or more than $1\frac{1}{2}$ tons to the acre, all through. (Record 6175-6-7, V. 15.)

The above statement of the defense is true, except as to being less than 470 acres of land.

Staton states that the 300 acres of land on the lower ranch is all hay except where the road comes out and where his cabin is built, but states that in each quarter section there is 164 acres,—the extra four acres in each quarter will off-set the road and building site and still leave 160 acres in a quarter section, in hay. (V. 16, 6185.)

Says there is from 170 to 180 acres in hay on the upper ranch.

Staton's testimony also shows that he has at least 470 acres in hay.

Defendants say Staton estimates his 1906 crop 15% short which will still leave him more than the average for that class of hay or $1\frac{1}{4}$ tons to the acre. (V. 54, 21409.)

The court will see that 15% of Staton's crop shortage is

over 112 tons, or that much less in 1906 than in 1905.

Staton states that the hay on his ranch, prior to the smoke trouble, averaged two tons to the acre; but, in 1905, only went one and forty-four one-hundredths tons to the acre. And in 1906 (Record 21409, V. 54) was 15% short as compared to 1905, or a total decrease of three-quarters of a ton to the acre since the smoke. (6019, V. 16.) That his meadows planted in 1888 was cutting as much hay as they ever did prior to the operation of the Washoe Smelter (6022, V. 16), states alsike clover on his ranches practically all killed since operation of the Washoe Smelter.

Spent \$500 in seeding clover on lower ranch in 1903,—was killed when up an inche or two,—killed that summer. (V. 16, 6023.)

The testimony of Staton as to his hay decrease and prior yield is not disputed in this record.

Staton's testimony shows he cut from his lower ranch in 1903 and sold 520 tons; fed fifty,—or a total of 570 tons of hay from the lower ranch of 300 acres. (V. 16, 6231 to 6235.)

Can't give the amount cut in 1903 on upper ranch.

The above testimony shows tStaton cut almost two tons to the acre the year the smelter closed n July. while in 1905, from the same land, he cut 432 tons,—a decrease on this land of 138 tons in two years.—and he states that his ordinary hay crop was 15% less in 1906 than in 1905 or a crop of about 368 tons in 1906, a decrease of 200 tons of hay in the year of 1906 from his hay crop of 1903, on the lower ranch alone.

Staton says, on page 6186, V. 16, of Record, that a nor-

mal crop on his land is two tons to the acre (6197, V. 16). Also says he cut more hay in 1903 than in 1904; more in 1904 than in 1905,—*showing a steady decrease in the hay yield, each season.*

Staton's evidence shows the extra care taken of his ranch in the last three years. (V. 17, 6412.)

Dr. Traphagen, defendants' witness, testifies that the Staton ranches are well taken care of. (V. 36, 14127.)

The testimony shows that up to the time of the smoke trouble these ranches were producing good crops of hay; about two tons to the acre, but, since the smoke trouble the hay in 1903 with 1906. On page 6240, V. 16, Staton gives acre; *even under better care than they received prior to 1902. There is no criticism in the record by a single witness to the care of Staton's meadows, and we find the same decrease on this ranch under good care as on the Bliss ranch where the defense alleges lack of care for the decrease. Staton's decrease in yield clearly shows it is not lack of care that causes the decrease. It is clearly shown that this decrease began with the operation of the Washie Smelter, therefore, is it not reasonable to presume that the smelter fumes is the cause of this decrease and damage.*

Defendants' Brief, says Staton sold his 1906 crop through a dealer for \$9.00 a ton on his ranch,—allowing \$2.25 a ton for baling, defendants' say Staton realized \$4,100 from hay crop alone in 1906. (V. 53, 21414.)

Staton says he got \$9 a ton for this hay baled and delivered on the car. *Allowing \$2.25 for baling, \$100 for loading or net price in the stack on the ranch of \$5.75 a ton,—and Staton's testimony shows this hay mostly timothy and clover, red top, timothy and clover, all tame hay*

except about 25 tons. *And, instead of \$4,100 for the crop as Defendants state figured on the basis of 612 tons. Staton's entire crop on both ranches in 1906, worth only about \$3,400.00, \$700 less than Defendants state. (V. 53, 21418.)*

Let us compare the amounts received by Staton for his hay yield has decreased three-quarters of a ton to the the net profit on his hay produced on the lower ranch. First it shows that he cut 570 tons, 520 of which was sold, and 50 tons fed. From both ranches in 1906 he got about 612 tons. Cut almost as much hay on the lower ranch in 1903 as on both in 1906. Never baled hay prior to 1902. Not necessary, Sold it all loose. (V. 16, 6240.)

Staton gives the *net profit* on the hay he sold from the lower ranch that year as follows:

300 tons to Beebe, at \$8.50	\$2,550.00
100 tons sold loose at 8.50	850.00
120 tons baled sold in Anaconda, at \$5.00	600.00
50 tons fed, at \$6.00	300.00
	<hr/>
Net profit	\$4,300.00

Staton (6240, V. 16) shows he deduced \$4.50 a ton from the price received, leaving him the above amount clear. The Beebe hay brought \$13.00 a ton. Staton deducts \$4.50 for expenses of growing and baleing, leaving the net profit as given above.

Staton states this hay sold in 1903 brought \$13.00 and \$14.00 a ton on R. R. Track, Willow Creek. (V. 16, 5990.)

The defendants are \$700.00 wrong in their estimate of what Staton received for his hay; they estimate \$4,100.00; but, take their figures, and they show, when compared with 1903, (the year the smelter was closed.)

First: For all the hay Staton raised in 1906, *on both ranches, he got \$4,100.00; and this is not net.*

In 1903 Staton made a net profit of \$4,300.00 on the lower ranch alone in 1903 or cleared more money on one ranch in 1903 than the hay crop on both ranches sold for in 1906.

Staton received for this hay \$9.00 a ton baled and delivered on the car. *From 1888 to 1903 never sold a load of hay for less than \$12.00 and as high as \$15.00 a ton in Anaconda.*

Defendants paid Staton \$10.00 and \$7.00 a ton in the stack in 1902 for the hay which they had damaged that year. (V. 16, 5990.)

The price paid Staton for his hay in 1902 by the Defendants clearly shows what was the minimum price for hay prior to the smoke. \$10.00 in the stack for clover and \$7.00 for wild.

In the year of 1904 sold 100 tons in Anaconda at \$14.00 a ton; could not sell any more of it. For the rest of the 1904 crop and the 1905, it averaged me \$4.00 a ton in the stack for these years. (V. 16, 5993.)

It is worth \$10.00 a ton in the stack if it had been all right. (V. 16, 5993.)

Wm. Bennger (witness for Defendants) states prior to the smoke *cheapest Staton hay ever sold in Anaconda was \$12.00 a ton. But he bought the same hay on ranch in 1905 for \$4.75 a ton, or at least \$5 a ton less than normal. (V. 21, 8035.)*

Staton states on page 21417, V. 54, Valley hay in 1906 sold in Anaconda from \$4 to \$6 a ton less than outside hay.

Staton had to sell his hay at Auction as he could not sell it any other way. Parties who had formerly bought his hay would not buy it. (V. 16, 6076.)

The cheapest Dillon hay has been laid down in Anaconda in the last year (3) is \$12.80 *and as high as* \$22.00 a ton. (V. 16, 6222.)

Been selling Montgomery (Defendants' witness) hay *prior to the smoke at* \$12.00 a ton *after the smoke he stated would not give me* .50c a ton *for the same hay.* (V. 16, 6263.)

Sold Stagg one load *in 1904 would not take any more.* Owed Stagg at the time \$100.00. (V. 16, 6266.)

You don't need to ask people in Anaconda why they don't buy your hay when the reason is as well known as it is in Anaconda. (V. 16, 6270.)

Could not sell any 1905 crop in Butte or Anaconda. (V. 16, 6282.)

McCallum & Cloutier Mercantile Company would not buy my hay, said it would ruin their trade if they bought it. (V. 16, 6283.)

Owed McCallum & Cloutier Co. \$1,000.00 and *tried to get them to take hay at any price to pay the bill and they refused.* (V. 16, 6285.)

(NOTE—We ask the Court to examine the purchase of hay from outside points and shipped into Anaconda during the period from August, 1904, to August, 1905. (Coyne's testimony of the firm of McCallum & Cloutier Co. see sheets attached to this brief)

Staton buys outside hay to feed his stallions, won't feed his own to them. (V. 54, 21410.)

(NOTE—The testimony of Staton shows that he

can scarcely sell his hay at all and when it can be sold only at a greatly reduced price. Staton's lands lay at a distance of from 1 mile to 3½ miles from the smelter.)

N. J. BIELENBERG, Comp. Wit.:

Defendants claim Bielenberg's stock losses were about normal for all three years, 1904-5-6, 1904, 600 cattle, 95 horses. Loss 23 cattle, 2 horses. 1905, 675 cattle, 95 horses. Loss 13 cattle, 5 horses. 1906, 660 cattle, 75 horses. Loss 12 cattle, 10 horses. (V. 54, 21500, 21516, 21519), (V. 12, 4419), (V. 12, 4695), (V. 12, 4656), (V. 12, 4302.)

We propose to show the exact condition of Bielenberg's stock, their sickness, abortions, deaths, number of stock kept. What class. Their treatment and care.

Just prior to Washoe works kept from 1200 to 1500 cattle on my ranch. (V. 12, 4413.)

I am in the stock business, raising stock; trading in stock; buying and selling and have been at my place since 1873. (V. 12, 4412.)

Have on my place at the present time, March 1, 1906, *I have 660 to 675 cattle, mostly steers; some cows; some yearling steers. Have 90 to 85 horses. (V. 12, 4412.)*

In April 1906 had 400 head, amount turned out. (V. 54, 21518.)

In April 1907 had 337 head still on feed.

These cattle I have now or 337 head I bought in January, February and March, 1907. (V. 54, 21517.)

The cattle I have on the ranch at this time (March 1, 1906) I have bought in the last three months, except 30 or 40 head. (V. 12, 4413.)

(NOTE—This statement of Mr. Bielenberg's shows he keeps very few stock on the ranch continuously, and these cattle he has there are mostly *steers*, which are being held pending their slaughter, as Mr. Bielenberg's testimony shows he is in the butcher business in Butte, and as can be seen by his testimony on page 4413-4412, V. 12, has less than $\frac{1}{2}$ the amount of cattle he kept prior to the operation of the Washoe Smelter.)

Sold his fat cows from the Deer Lodge Valley for \$18.00 to \$20.00. (V. 12, 4667.)

Same class of cows outside sells from \$25.00 to \$26.00 a head. (V. 12, 4667.)

Has 700 head of cattle in the Big Hole, this winter (1905-6) and have not lost one. Lost none in winter of 1904-5 as well. (V. 12, 4675.)

Very little abortions in Montana, and I have acquired this information from being a stock man for 40 years. (V. 12, 4681.)

Bielenberg tells Mr. Kelley, Counsel for the Defense, he is the only man he ever heard state that abortions in stock was a serious condition in Montana. (V. 12, 4413.)

Never heard of contagious abortions. (V. 12, 4684.)

Horses all have sore noses that are not in the stable. (March 1, 1906.) (V. 12, 4699.)

We will take Bielenberg's stock losses from the fall of 1902 to October, 1903, or for a period of twelve months.

Cattle loss to October, 1903, 106 head. (V. 12, 4669.)

Calf loss, 300 head. This 300 includes abortions. (V. 12, 4708.)

Calf and cattle loss 406. (V. 12, 4478.)

Horse loss from fall of 1903 to February 14, 1903. (V. 12, 4712.)

Loss of 9 head. Grown horses 9.

Had 704 live cattle in February, 1903, and 66 dead, or must have had in Fall of 1902, 770 head of cattle. Lost from fall of 1902 to October, 1903, 106 cattle or 13.7% in a period of 12 months, and 300 slung calves from a herd of 770, which were not all cows. (V. 12, 4418.)

Lost 9 horses from about 95 head from fall of 1902 to February 14, 1903, or in a period of about five months, 10% of his herd of horses besides the slung colts. (V. 12, 4712.)

LOSS IN 1904.

Lost 23 cattle in 1904, and short 30 cattle, afterward found dead, but not found in 1904. (V. 12, 4419.)

75 slung calves. (V. 12, 4420.)

(NOTE—Mr. Bielenberg had in 1904, Defendants' state, 95 horses.)

Loss in cattle found, 23. Total, 53. Or a loss of almost but afterward found dead. Total, 53. Or a loss of almost 9% besides 75 premature calves. 2 horses. Horse loss about normal in 1904.

1905. 5 horses. 40% colts slung. 13 cattle. 235 calves short. (V. 12, 4420.)

My calf loss in 1905 was almost a total loss. 58 calves from 388 cows gives a few late calves or born late in the season. (V. 12, 4459.)

Let us see what the per cent of Bielenberg's calf loss was in 1905. The testimony of various witnesses in this record gives 80% to 90% of live calves and average of in-

crease. We take 80%, or the lowest, as a basis, and take 75 calves as the number Bielenberg got from his cow. Bielenberg states he had 17 bulls in this herd of cows. 80% of 388 equals 310 calves under normal conditions. Got 75 calves in 1905. 235 calves short. *Or a loss of about 75% in breeding and abortions.*

Wegner, Defendant's Witness, says a man should get 80% in calves. (11578, V. 30.) (V. 12, 4459.)

Mr. Bielenberg states he codd these cows as soon as they got fat enough to sell from \$18.00 to \$22.00 a head.

I do not breed any more. (Quit breeding cattle in 1905.) (V. 12, 4434.)

Has only 30 or 40 of these cows left or cattle branded with his brand. (V. 12, 4413.)

Defendants state Bielenberg had 600 cattle and 75 horses.

Belenberg states on page 21518 turned out in spring of 1906, 400 head.

States on page 4413, V. 12, these cattle I have now, March 6, 1906, have bought in the last three months.

January 17, 1907, 337 cattle on the ranch. (21518.)

(NOTE—Showing that Mr. Bielenberg is changing his cattle all the while, killing, buying and selling, and still under these conditions the loss is great, and instead of having 600 cattle in 1906, he had, April, 1906, 400 head. January, 1907, 10 months later 337 or an average for the year of less than 400 head cattle and 75 horses.)

DIED:

10 horses and 2 colts. (V. 54, 21499.)

12 cattle died, counted them. Lost a lot more, I had in

the pasture and did not get. Below for the year we give: (V. 54, 21521.)

Bielenberg's total loss of all kinds of stock, horses, cattle, and premature calves and colts. (Estimated on premature calves.)

Fall of 1902 to fall of 1903, 415 head. In 1904, 312 head. In 1905, 252 head.

40% of the mares in fall of 1905 slunk their colts, which is not included in 1905. (V. 54, 21521.)

In 1906, 25 head, but states these in 1906 he saw and counted but states lost a lot more. No loss of calves this year as he had stopped breeding in 1905.

The Court must bear in mind one fact and that is this, that when the per cent of stock loss is given, as given by Dr. Knowles, Bielenberg and others, they don't mean what they actually find dead, but what they will be short in cattle at their round up, so the loss of cattle given means cattle that *have died or not recovered* and not the ones *found dead and counted*, as the Court well knows that it is an impossibility to find every animal that dies, so when they are *not found* they are *counted dead*, and these cattle that are *not found* go to make up the 3% loss, as testified to as being the average loss of stock in Montana, and no one on the stand except Dr. Gardiner, Deft. Wit., has placed the normal loss in Montana at 10%, and the Court will see by Dr. Gardiner's testimony that his acquaintance with stock conditions from actual observation is very limited.

This man, for a consideration or *on a salary of \$700.00 a month disputes with his limited knowledge (as shown by his experience and limited investigations and over a very*

limited time, and he disputes men who have been in the stock business in Montana before he was born. This man's statement as to normal stock loss in Montana clearly shows he is testifying in this case to cover what the defense wants to attempt to prove, and is and does state things to be true of which he has no knowledge.

Mr. Bielenberg states he first noticed the following conditions in the live stock of the Valley after the operation of the smelter. (V. 12, 4413.)

I first noticed the conditions in the fall of 1902. (V. 12, 4414.)

Horses had sore noses. They looked rough; hair stood out—and dumpish—and the eyes looked lazy and watery. (V. 12, 4414.)

Prior to February 14, 1903, I lost nine head of horses (or from fall of 1902 to February, 1903.)

The cattle had shrunk very much and were very thin; the hair wrong end to and dumpish. A good many of them were by themselves; would go into the brush two or three in a bunch; they were sick, and they had scoured very bad. (V. 12, 4415.)

Every one of the cattle were affected at that time, (February 14, 1903.) I had 704 live cattle and I had lost 66. (V. 12, 4416.)

(NOTE—Here on this page Mr. Bielenberg describes these cattle as in a field or were allowed to pasture in February in 1903, while since that time, or 1900 to 1906, has kept up and fed hay.)

Most of the horses were affected. All *we caught and examined* were affected as before mentoned. (V. 12, 4416.)

A great many cows slipped their calves about this time; the horses the same thing. (V. 12, 4416.)

Calves that were born at this time were weak, and if a person was not right there they would not get up; would die.

All cattle that have been born in the Deer Lodge Valley from *that time on, were stunted*, or to the present time) Everybody's cattle. And a calf at six months is not as big as it should be at four months, and this condition continues to maturity, and even if they get fat they have not got the weight, and are not worth within \$7.00 or \$8.00 of what they are worth in other countries.

Colts are the same; they are stunted. Cough most generally the year round and have no vitality.

Most of the cattle I have bought since November. (Bought 200 in January) I bought them to feed my hay, and I bought late, so I would not have to turn them on pasture. (V. 12, 4418.)

From 388 cows turn out last spring (of 1905) got 58 calves. Might of had a very few more late calves but very few. (V. 12, 4418.)

Had 17 bulls with these cows. (V. 12, 4418.)

(NOTE—*Has only 25 or 30 cattle on the ranch with his brand on.*)

(NOTE—The Court doubtless knows that in the spring of the year when cattle are turned out on the range or on grass, all stock is branded with the owner's brand, and by Mr. Bielenberg's statement that he has only 25 or 30 cattle with his brand on, means he has only 25 or 30 of the cattle that he had in the spring of 1905, and further on in his testimony he states why he sold these cows.)

In 1904, 23 cow sand yearlings died. (V. 12, 4419.)

In 1904, 2 horses.

In 1904 was thirty head of cattle short.

When we gathered them up (I did not look up my cattle every day) they were a way up in the timber and we found those cattle up in the timber that were dead a year or so. Of course we could not tell *what year they died*, but this year or last, *and these cattle (or 30 head) I do not put down.* (V. 12, 4420.)

The Court can see by these statements that Mr. Bielenberg gives 23 head of cattle dead, these he knows died in 1904, and *there was 30 head he did not find which were out on the range and could not be found alive or dead in 1904, but were afterward found dead. So Bielenberg's loss of cattle in 1904 was 53 head.*

The Court will also note Mr. Bielenberg is being questioned as to the numbers he lost each year—each year's loss separate and distinct from any other year—and he gives a loss of 30 head, which he cannot say died in 1904 or 1905 or when they actually died, but they died nevertheless between the year 1904 and 1905 or the present time and if they had been alive in the fall of 1904, what more likely than that they would have been found by some one that fall.

Every stockman knows if cattle are alive in the fall, as soon as the snow comes in the fall of the year, cattle seek lower pastures out of the snow, but the evidence shows Mr. Bielenberg, short 30 cattle in the fall of 1904 which were afterwards found dead. What more reasonable to suppose than that these cattle died in 1904?

In 1904 seventy-five premature calves in the winter, and there was more than that that I did not see, and four colts that I saw that were slipped. (V. 12, 4420.)

You can tell about these slung calves, sometimes the cow will be beside the calf and again you will see a cow that has not cleaned and you know she has had a "premature calf."

IN 1905:

Lost five horses in the field. (V. 12, 4420.)

11 cows, 2 steers, 100 slunk calves, and five premature colts.

In 1904 and 1905 cattle got all the hay they could eat, and they law on it, and that is the reason the loss is not so great. Cattle done fairly well under these conditions. (V. 12, 4420.)

I didn't hardly let *any* of the cattle *eat any* of the grass in the field. (V. 12, 4421.)

(NOTE—Here Mr. Bielenberg shows the precaution it is necessary to take in the Valley to avoid great loss; feeds excess amounts of hay and do not pasture, while in 1902 or when this trouble began stock were allowed, and did pasture on this ranch to February, 1903, as at that time the people did not know what to do, to protect their stock.)

Have handled beef cattle in Montana for 40 years, and *the principal market for beef is Chicago. I have sold cattle in Butte, Anaconda, Alaska, Seattle and Portland. V. 12, 4432.)*

Cattle and horses from the Deer Lodge Valley are stunted and wont bring as much as cattle from other countries, for the simple reason they wont weight as much nor do they get as fat. (V. 12, 4434.)

Have had a calf suck a cow for six months and the calf would be poor. (V. 12, 4434.)

Cattle grow but don't make flesh; in July and August cattle are in fair shape.

I used nothing in my breeding but thoroughbred bulls, Durham and white faces.

(NOTE—The breeding even to this class of bulls does not overcome the conditions. (Speaking of stunted condition of stock and failure to put on flesh.)

I do not breed any more. I had a few calves but I killed them.

(NOTE—What does Bielenberg's testimony show from 1873 to the Smoke period? He bred and raised cattle with good success but since the smoke has been compelled to quit raising stock, and buy cattle late in the fall and winter and not pasture, although he has (4412, V. 12) 8860 acres of land on which to pasture stock which his testimony shows he cannot use.)

Mares get so they won't breed at all, I think. (V. 12, 4435.)

Bred 14 mares last year myself in the corral, and only got four, (meaning four colts.)

The lips or noses of the cows peel off. Teeth get loose. First noticed this looseness of the teeth in fall of 1902. *Cattle and horses have a garlicky breath.* (V. 12, 4438.)

Cattle look to be in better shape than they are on killing. (V. 12, 4441.)

Killed cattle on my ranch of which I would not eat the meat. (V. 12, 4442.)

Killed calves on the ranch which I sent to Butte. The livers were not good; were enlarged; were soft. The

heart flabby; throw it on the ground and it would flatten out.)V. 12, 4442.)

A heart should bound like a ball (of a sound animal). The lungs wer just lke a dish rag.

(NOTE—Speaking of smoked cattle.)

A sound animal's lungs should be puffed up and have big lungs.

I cannot successfully conduct stock raising on my ranch at this time, as I cannot use my fall and winter pastures. I have to feed from 2½ to 3 tons of hay to winter a head of stock and if the hay was in condition it would be worth more money than the animal would be worth in the spring.

Stock worse affected n my vicinity in the fall and winter. (V. 12, 4443.)

PRIOR TO THE SMOKE.

A winter like this or (1905 and 1906) up to this time *I would not have had to feed them a pound up to this time. March 1st, 1906. (V. 12, 4445.)*

Prior to the smoke let our cattle and horses run out as soon as they culd get water. (V. 12, 4445.)

Their condition of health good.

Their condition of flesh good.

Range in vicinity of my ranch good, less stock there. (V. 12, 4446.)

If it was not for the smoke conditions Deer Lodge Valley is as good a valley as there is in Montana for raising stock. (V. 12, 4449.)

I have been familiar with the conditions as to stock all over Montana for the last thirty years. (V. 12, 4450.)

I ran the first herd of cattle on Sun Rver in 1872. Had

experience on Tounge River, Yellowstone, Milk River, Smith River Valley, Beaver head, Madison, Jefferson, Galatin, in fact all the valleys I bought cattle in.

Prior to the Smoke I bought cattle and took them to Deer Lodge Valley to Feed. (V. 12, 4451.)

Prior to the smoke I fed cattle that went to Alaska; fed them on Deer Lodge Valley Hay; four of the steers brought \$1,000.00 a head (in Alaska.)

Not over 15% of the cattle in the Valley now as compared to what there was before the smelter started. About 20% of the horses—(1906.) (V. 12, 4453.)

The reason of this decrease is the *Smoked Cattle die and those that do not die are sold out.* (V. 12, 4454.)

The cattle have not been replaced; (in the Valley), a few might. (V. 12, 4454.)

People with large herds of cattle moved them out of the Valley after 1902-1903. (V. 12, 4455.)

The difference in the price of what we call fat cows from the Deer Lodge Valley and other valleys is as follows: (V. 12, 4457.)

Deer Lodge Valley Cow \$17.00 and \$18.00. Beaverhead and Big Hole Valley \$25.00 to \$27.00.

Deer Lodge Valley calves do not fetch as much as calves from other valleys.

Bielenberg is President of Butte Butchering Co., and knows price paid for cattle. (V. 12, 4458.)

Prior to the Washoe Smelter I never fed my horses since I have been in Montana; always run at large. (V. 12, 4459.)

My loss in calves in 1905 was almost a total loss. Testi-

mony shows from 388 cows a few more than 58 calves. (V. 12, 4459.)

(NOTE—Let us see about what per cent Bielenberg's calf loss was in 1905.)

The testimony of various witnesses shows from 80 per cent to 90 per cent of live calves, a normal calf crop. We will use the lowest and allow 75 calves for Bielenberg in 1905. He says he got 58 and a few more late in the fall, so we believe 75 will be fair, and the Court will remember Mr. Bielenberg states he had 17 bulls with this bunch; more than enough bulls.

Eighty per cent of 388 equuls 310 calves under normal conditions; got 75 in 1905; 235 short, or as 310 in 235 or 75 per cent loss on breeding and abortions.

Forty per cent of my mares which were in foal slipped their colts. Cannot raise live stock at a profit. (V. 12, 4460.)

While the Washoe Smelter was shut down in 1903 the conditions in the Valley were all right, and the people were happy. (V. 12, 4461.)

No sickness to amount to anything prior to the Washoe Smelter among stock. (V. 12, 4463.)

Since the operation of the Smelter stock has been sick more or less all the time.

The general condition of the live stock of the valley at this time is bad.

Majority of the cattle are sick, scouring, watery eyes, hair standing the wrong way; cattle are dumpish; cows lose their calves; are short of milk.

States had 300 slunk calves in 1902 and 1903 up to about July. (V. 12, 4478.)

Montana is one of the healthiest states in the Union for cattle and horses. (V. 12, 4489.)

Have handled over 100,000 head of cattle in Montana. (V. 12, 4490.)

People used the ranges in the Deer Lodge Valley from 1865 up to within the last year or so. (V. 12, 4490.)

Deer Lodge Valley is best adapted for the purpose of raising horses, cattle and sheep.

All my land is fenced (over 8000 acres.) (V. 12 4491.)

In 1904 some of my cattle on the range were so badly smoked could not drive them home.

Bielenberg swears positively his sheep, or the sheep of Hitz and Bielenberg, died of poison in 1902 and 1903 and not of the "Yellows" or "Ictero Haematuria." (V. 12, 4556.)

Fall of 1902 to Oct. in 1903 I lost 102 head of cattle. (V. 12, 4708.)

Nine horses died from fall of 1902 to Feb. 14, 1903. V. 12, 4713.)

Lost 1500 sheep in 1902 and 1903; sheep also aborted. (V. 13, 4816.)

Lost these sheep in 1902, 1903 and 1904. (V. 13, 4840.)

Never heard of contagious abortion among range cattle. (V. 54, 4817.)

Bielenberg's losses between April 14, 1906, and Jan. 18, 1907, or for a period of nine months.

Ten horses and mares and two colts. (V. 54, 21500.)

Twelve head of cattle died in the field and tweney or

twenty-five head of calves; did not weep a record of the calves, but there was probably that many. (V. 54, 21500.)

Cattle died in my pasture and I did not put them down because I could not tell my brand. The maggots had eaten them up.

The cattle and horses had the same symptoms as in 1902. (V. 54, 21506.)

Not 10 per cent of the stock in the Valley there was in 1902. And what there is there is an onery lot of stock. (V. 54, 21501.)

The Wenger steers kept on Quinlan's ranch. Mr. Bielenberg compares their condition with cattle from the Big Hole, and states that you could cull all the worst cattle from 10 to 15 thousand head of Big Hole cattle and these culls would be better than the Wenger steers on Quinlan's ranch. (V. 54, 21501.)

Horses in the valley in 1906 had the sore nose. (V. 54, 21511.)

Deer Lodge Valley hay sold in Butte for \$11.50 a ton. F. O. B. Butte. (V. 53, 21513.)

Outside hay worth at the same time \$16.00 to \$17.00 a ton. (V. 54, 21513.)

Feed on Deer Lodge Valley hay to horses only fed it to cattle we are going to kill in four to six days. (V. 54, 21513.)

The cattle I have now I bought in January, February and March, 1907. (V. 54, 21517.)

Have got 337 head all told on my ranch at the present time, April 15, 1907. (V. 54, 21518.)

Turned out about 400 head in the spring of 1906. (V. 54, 21518.)

During this time I lost 12 head that I counted (or from April 17 to date, Jan. 15.) I lost more than that, but how many I don't know, because I had them in the pasture and I did not get them.

These cattle that died in the pasture I don't know whether they were mine or not, but *I do know* no one else had any in there.

A man should not lose any cattle feeding them all the hay they can eat. (V. 12 4673.)

COWS ABORTING.

Defendants claim Staton contradicts Bielenberg as to being able to tell when a range cow has lost her calf. In regard to Staton's statement it is as follows: (V. 15, 5968.) Staton states they did not breed; if they did breed they lost their calves. (Staton, V. 16, 5969.) These were range stock. I did see some of them slip their calves. Because a man cannot tell unless *he is among them* when they do abort.

Bielenberg (V. 12, 4435.) "You can't see them slip their calves because they run at large. (V. 12, 4420.) We can track up nearly every one of them. I can tell mostly when a cow drops her calf; the cows will generally be with the calf. Sometimes the cow is there and the calf may not be there, and call it a "premature calf," because the cow has not cleaned.

A cow might abort a calf and a man can't tell anything about it. He can't be following the cows day and night

after he turns them out, but while we were feeding them in the field we lost the most by abortion. (V. 12, 4685.)

The Court can see by the testimony quoted, both Staton and Bielenberg statements are the same, and to the same effect. If you are with your stock, or have them under close confinement you can tell when cows abort, otherwise not.

Defendants (611) state N. J. Bielenberg has had good success fattening cattle as he sold 100 head on May 6th, 1906, for \$4.25 per cwt., 15 cents to 25 cents *more than Big Hole cattle were selling for*. (Transcript, V. 29, 11477.)

In the above statement the Defendant's counsel states an *absolute falsehood*.

The page they quote (11477, V. 29) Wengers, Deft. Wit., testimony is as follows:

“Q. Do you know of any one else selling Big Hole cattle about the same time down there?”

“A. Oh, yes; there was quite a few sold.”

“Q. Do you know of Nick Bielenberg selling any about that time?” (V. 29, 1176.)

“A. Yes, sir.

“Q. What did he get for what he sold?”

“A. *I bought 100 head of Nick Bielenberg's cattle for \$4.25 per cwt., weighed at Anaconda.*

The Court can see by this that there were not Deer Lodge Valley cattle as the defense states, but Wenger, on his cross examination, states as follows in regard to these cattle. (V. 30, 11582, Wenger's cross-examination.)

“Q. Now you bought some cattle from Nick Bielenberg, I believe you stated?”

“A. I did, sir.

“Q. What were these cattle, Deer Lodge Valley cattle or Big Hole cattle?”

“A. *Oh, I bought them in the Big Hole.* I don't know where he got them from. He got some from Nevada Creek, I think. I remember some of the brands that came from Nevada Creek stock in these cattle.”

Q. Who sold you these cattle?”

“A. *Jim Ennis, his partner.*

“Q. Did you ever talk with Mr. Bielenberg or have any dealing with him about them? (V. 30, 11582.)

“A. No, I don't think I seen Mr. Bielenberg.

“Q. How many did you buy from Bielenberg, or Bielenberg and Ennis, or whoever you bought them from?

“A. One hundred head, think it was.

“Q. And were they in Big Hole when you bought them?

“A. Yes, sir.

“Q. What did you pay for these Bielenberg cattle?”

“A. \$4.25 a hundred.”

These cattle were shipped to Seattle. (V. 30, 11587.)

(NOTE—Mr. Bielenberg's testimony is he cannot make first-class beef from the hay on his ranch since the smoke, but prior to that time he did so. The defense were not able to dispute *Mr. Bielenberg's testimony by any witness, so they must misstate the record in trying to accomplish their purpose. The record shows these 100 head of steers were Big Hole steers, raised in Nevada Creek, fed in the Big Hole, bought there, driven and weighed in Anaconda and shipped to Seattle.*

Mr. Bielenberg in numerous places in his testimony speaks of feeding beef in the Big Hole, and these are some of the cattle he mentioned as being there.

There is no excuse for the counsel for the defense in making the statement they did in regard to these cattle being from Deer Lodge Valley, as the record is to plain in regard to this transaction, and must have been made with the hope that among all the mass of testimony in this case it might slip through and not be challenged by the plaintiff, but the statement was so *plainly false and exaggerated as to the price paid for supposed Deer Lodge Valley cattle it was immediately detected.*

Defendants say "Mr. Staton's stock losses tells an interesting story. In the winter of 1903-4, and until the winter of 1904-5, Staton had 155 head of cattle and no losses on his place. In the winter of 1904-5, and up to October 25, 1905, lost 51 head of cattle out of 155, no horses out of 30 head; 1906 out of 17 cattle and 14 horses he lost 1 milch cow and three horses.

Part of the above statement in Defendants' Brief is true—Station's stock losses *does tell an interesting story*, and so the Court will see and realize when all the facts as to Staton's losses are shown. The defendants' brief, in order to bolster up the theory of *starvation* of this stock, as claimed by them, *leave out a loss of 16 horses out of 30 head which Station lost between January, 1905, and January, 1906.*

There are several conditions that we propose to show to the court in regard to the losses among Station's stock. We will first take up the season of 1902—and we will ask the court to note that this sickness in Staton's stock *began in the spring, but deaths first occurred in the fall;*

this only applies to stock that have not been under the moke conditions before. *Once stock has been subjected to these conditions they die along at different intervals, but in most cases it takes some considerable length of time, after being brought to the Valley, for them to get poisoned sufficiently to cause death.*

The sore nose first developed on Staton's ranch in July, 1902. (V. 16, 6345.)

First noticed this sickness in 1902. Staton says he first saw the sore nose on a horse about one mile from the smelter—the Allen ranch. Next saw two sore nose horses on Section 8, about two miles from the Washoe smelter, the Wenger & Bourbinnier horses. (V. 15, 5965.)

The first of this sickness that I noticed on cattle was in June, about half a mile from the smelter, at the Morrell Iron mine. The next was on the Callan ranch—the cattle were scouring and had tucked up bellies; the scour was black. Staton further testifies that he had one steer among the cattle at Morrell's and one cow at Callan's. (V. 15, 5966.)

Noticed no serious effect, says Staton, on his cattle until in September, 1902, after moving them to the lower ranch; in eight days they began to die. (V. 15, 5967.)

Four days after Staton had these cattle put into this field of 300 acres, men reported to Staton that the cattle were starving, which the Court can see, was an impossibility when feeding, in the month of September, about 126 head, as the testimony shows. Dr. Gardiner saw a similar bunch of cattle in 1905 on Staton's ranch, and he said they *looked* starved.

Staton put up these cattle in corral and fed them hay for a month and shipped them away; a great many were thin in flesh and were scouring. (V. 15, 5967.)

Had 55 cows and 55 calves in 1901; and from these 55 cows Staton only got ten live calves, in 1902. (V. 15, 5968.)

(NOTE—This shows a great loss in breeding and in live calves in 1902, after smelter started.)

Bred 19 dry mares in 1901; in spring of 1902, got 15 colts. (V. 15, 5969.)

Bred the same mares to the same stallion in 1902 and only got three colts in 1903. Here we see the decrease in breeding, and abortion in stock began. They had all bred well before the smelter started. (V. 15-16, 5969-70.)

Montgomery, Deft. Wit., prior to operation of the Washoe smelter, turned beef steers in Staton's field in November and left them on pasture for a period of 30 days, and during the time these cattle were there they lost no flesh. *They weighed in and weighed out, and made a gain of seven pounds. Cattle in medium condition in the field at the same time made a rapid gain; this was in the fall of 1901; 275 cattle in the field at that time. (V. 16, 5970.)*

Here the court can see the difference in pasturing of cattle in the Deer Lodge Valley prior to the operation of the smelter; *they did well up to December. On the other hand, after smelter operated, they starved (according to Deft.) in September.)*

Staton says: My cattle and horses were in the Milk River country in 1903, excepting a few work horses and

two milch cows that I kept in the barn. That is, the horses were kept in the barn and the cows in close corral. (V. 16, 5972.)

Shows Staton's losses in 1902, nine horses and colts died and 32 cows and calves and yearlings. (V. 17, 6369.)

Station's itemized list of stock, in 1902, shows he had over 200 head.

We ask the Court to compare the conditions, as given on Staton's ranch in 1902, *which the Defendants acknowledge were caused by smoke*; also to further notice that in 1902 *they paid to Staton the largest amount of damage paid to any single individual at that time (\$10,487)*, page 6312, V. 16 of record, besides allowing him 50 tons of hay; *they acknowledged this damage was caused by the smelter to his crops and stock, and they were then willing to and did pay the damage. Furthermore, the price was fixed by their own men, to-wit: McCleary, Miller and Dr. Knowles.* The Court will notice that they paid to Staton *about one-thirtieth of the entire amount paid out at that time, and they then settled the claim of every man in the Valley, and many claims of men who did not reside there. This settlement, and the amount paid to Station, shows very plainly that Staton was one of the worst injured men in the Valley in 1902, and, as the record shows, they admitted his hay a total loss, as they paid for it all and took it all except fifty tons.*

Now, at this time, they try through insinuations of counsel in their questioning, to discredit Staton.

First—*They ask Staton if he had bought large quantities of paris green in the fall of 1904.*

Second—*If he had not starved his cattle for purposes of this suit.*

Third—*If he had not kept his cattle in pastures where there was no feed.*

Fourth—*If he had not told Post & Johnson of the 'Big Hole' that he would take cattle over to the Staton ranch and starve them, and make the defendants pay for them.* Also asked other questions along the same line, many of which were impeaching questions. *They failed in every instance to produce testimony which could in any way impeach Mr. Staton.* What more natural or reasonable that, if there is any damage being done by the smelter at this time, and since the said year 1902, as claimed, *that Staton should have heavy losses, the same as he had in 1902, for which they paid. Staton's lands are located close to the smelter; and he is the only man in the vicinity that was engaged in the range stock industry in 1904-5. The stock ran with three or four miles of the smelter.*

Ralph E. Smith, Deft.'s Wit., *says the smoke has killed or injured the trees on Section 35, Township 4 North, Range 11 West, and is doing so at the present time. This land, as the record shows, belongs to Staton and is his pasture land. Is there any wonder that Staton's cattle should look starved when his cattle have to pasture in the summer time on land where a tree will not live?*

The record shows by the testimony of George Parrott, J. O. Allen, William Evans, Ed Wolfe, W. C. Staton and others, that the Mill Creek range, *before the smoke, supported 1000 or more cattle and horses, and they did well, while in 1904 and 1905 Staton's stock, about 200 head, was the only stock on this range.*

CONDITIONS IN 1903.

Mr. Staton testified: All stock kept on the ranch up to July 1st, 1903, was kept in the barn and close corrals only; had work horses and two milch cows. After the smelter closed on July 1st, *he took one horse to experiment with to see if the poison on the grass would wash off*, as it was claimed it would. (V. 16, 5972.) About two weeks after the smelter closed turned the horse out and in a couple of weeks he had a sore nose. Staton then put the horse up; continued this with him off and on until October. I turned him out then and he got fat; then turned out the rest. The horses then did fine and Staton thought things were going to be all right. Staton bought cattle of Wenger that came from Idaho, and turned them out. Staton did not feed until about January 1st, 1904. The stock did well that winter. (V. 16, 5972.)

Only fed 60 tons of hay to that stock, and the hay that was fed was the hay cut in 1903, when the smelter was not in operation.

The good condition of Staton's stock, and their doing well in the winter of 1903-4 is easily accounted for. First, the smelter had been closed for a period of some months, and the poison had been washed from the grasses.

The reason Staton suffered no injury in the fall after the smelter started is easily explained in his testimony on page 5964, V. 16, of the record. He says: *That in the spring* the smoke goes mostly in a south and southeasterly direction, and, *in the fall, or after July, it goes mostly down the valley* or in a northerly direction or away from

the vicinity of Staton's home ranch, where his testimony shows his stock was kept that winter.

Now, we ask the Court to carefully note what happened in 1904 *and see if the condition of Staton's stock is not exactly similar to 1902, as to the time of the year that the sickness began to appear—time of death of the first animals, etc.*

Staton states that from *October, 1903, to June, 1904, the stock did well.* (V. 16, 5995.)

(NOTE—Witness here gives the period of time in which his stock did well—October to June, *or eight months*, and by confining it to dates, it shows that they *only did well up to June*, after that that his stock began to sicken is the only logical conclusion to draw from his statement.)

Staton says his hay crop was injured in May 1904, by smoke. (V. 16, 6300.)

Put horses on feed in October, 1904. (V. 16, 6363.)

Horses began to get sore nose in the fall of 1904. (V. 16, 6367.)

Witness Staton says "all the horses on his place were sick in the fall of 1904; *he put them on feed; some got well and some died.* (V. 17, 6377.)

Cattle sick on lower ranch. October. 1904. (V. 17, 6387.)

After the new stack at the Washoe smelter was built, first cow died in October, 1904. (V. 17, 6012.)

(NOTE—Here we see the sickness appear in Staton's herd of cattle at about *the same season of the year in 1904 as it did in 1902; also the deaths begin to occur at about the same time, to-wit: in September of the year 1902 and in October of 1904, showing that after*

a shut down period it takes more or less time for cattle to die, *but they began to sicken at about the time that the smoke is the worst in that vicinity and did die within a greater or less period after the smoke goes down the valley (or in the fall.)* But Staton's testimony shows that whilst the smoke is not so bad on his ranch in the fall and winter, it comes there occasionally at all seasons of the year.)

Mr. McCartney, Deft.'s Wit., in his testimony, shows that cattle continue to die for a period of about one year from the effects of the smoke, even after being removed from the vicinity of it, at Great Falls. (V. 27, 10723.)

Mr. McCartney, Deft.'s Wit., gave the symptoms of the cattle from Great Falls, affected by smoke from that smelter, and the symptoms are about the same as given by the farmers of the Deer Lodge Valley. On page 10722, V. 27, Mr. McCartney says they died *from within two months to a year* after being exposed to the smoke, and his testimony shows they were removed almost immediately from the vicinity of Great Falls, and they continued to die for almost a year after being taken away. (V. 27, 10722.)

Staton's cattle *were new stock, and were not subjected to the fumes of 1902 and 1903.* (V. 16, 5995.)

Staton's 1902 cattle, which the defendants acknowledged were "smoked" in 1902, continued to die throughout the winter, in the Milk River Valley: 25 or 30 died there. (V. 16, 6013.)

Staton says that range stock at the present time, if given only the same care as they had prior to 1902, would all be dead in two years. (V. 16, 6016.)

In the winter of 1904-5, Staton fed these cattle (155,

about), three hundred and fifty tons of hay in the corrals, and turned them out on May 10th, 1905. (V. 16, 5978.)

In June of 1904 cattle began to sicken, and 51 head died between October 17, 1904, and October 25, 1905. (V. 16, 5979.)

(NOTE—The bulk of these cattle were sold to defendants at public auction on October 19th for less than eight dollars per head. Here we see a loss in this herd from October to October, one year, of about 33 1-3 per cent—not including aborted calves.)

The defendants, in order to bolster their starvation theory of the cattle, say that Staton lost no horses out of 30 head.

Staton says he lost 13 horses by smoke and three from other causes since October, 1904, to the present time, or March of 1906. (V. 16, 6075.)

All horses on Staton's ranch sick in the fall of 1904-5. put them up and fed them hay, then some died. (V. 16, 6377.)

When the defendants claim that Staton did not lose any horses during the time he was losing these cattle, they misstate the record, and their theory of starvation of these cattle, because Staton did not lose horses at the same time, again fails.

This statement by defendants of no loss of horses by Staton during this period can be no oversight. Staton lost in horses over 33 1-3 per cent; *with no aborted colts counted.*

(NOTE—The defendants are *careful not to touch on abortions and failure to breed on this ranch.* We call

the Court's attention to the fact that Staton's herd of cattle was a breeding herd, and his horses the same.)

BREEDING—DECREASE.

In the fall of 1903, Staton bought 85 cows; these were cows which had never been in the Valley, and were bred outside of the Valley; the following fall weaned 75 head of calves; 90 per cent calf crop in 1904; in 1905 got 47 calves, 53 per cent calf crop, in 1905. (V. 16, 5976.)

Staton shows this herd of cattle decreased 14 head during one year, or a total loss of all the increase and 14 head less than he started with in the fall of 1904. (V. 16, 6012.)

In the fall of 1904 had 168 head.

In the fall of 1905 had 154 head.

Should have had under normal conditions 238 head, showing a loss from the normal of 84 head, which 84 head estimated loss includes abortions, deaths and failure to breed, or a 50 per cent loss, in one year, but the defendants divide this loss into two years, 1904 and 1905, when the actual period of loss was about 12 months or one year.

BREEDING OF HORSES.

Bred in 1904, 18 or 20 mares. Got six live colts; one of the six died inside of 36 hours. (V. 16, 6362.)

These mares were put up in October or November, 1904; a great many of them looked to be in foal, and witness Staton says there were no colts; believes the colts were slunk. (V. 16, 6363.)

(NOTE—Here, again, as in 1903, we have the conditions duplicated as to the breeding of the horses.)

Bred 122 mares in 1904; got 42 colts or 30 per cent.
(V. 17, 6374.)

(NOTE—Should have had eighty per cent colt crop,
which is about normal.)

Defendants state that the Anaconda Company purchased 99 out of this band of cattle that were dying, and the record shows that these cattle were *put on feed October 19th and kept on feed until in June, 1905, or about eight months.*

Dan Thomas, Deft.'s Wit., states, on page 17925, V. 45, they fed into June; there was green grass when they fed those cattle hay. Staton's testimony, given on cross-examination, says that in order to keep cattle and horses alive in the valley you must feed hay 8 to 10 months in the year and then you will lose some of them, and this is how defendants kept Staton's cattle from dying; *did not allow them to pasture until in June.* The defendants *knew as well as the farmers that that was the only way of keeping the cattle from dying, as the hay contains less arsenic than the grasses.* Notwithstanding this excess feed, the defendants lost some of these cattle bought of Staton, and we ask the Court to note the number of calves received from these cows in 1906; they originally *bought 33 cows*, and up to *May 27th 1906*, there had been *born 11 calves*, or 33 1-3 per cent (Dr. Gardiner's testimony, Deft. Wit., V. 40, 15946), and, later, he gives three more, or 14 calves born from 33 cows for 1906—*less than 50 per cent for the year.*

Defendants state Staton says: Three of which died shortly after the sale and one milch cow since then. The

balance of these cattle were kept on his place and sold for beef to the penitentiary in October, 1906. (V. 54, 21463-64.)

Staton's testimony shows he lost this one milch cow, and from the 12 cows he had only got two calves, and his testimony was *confined to the time between April, 15th and time of his testifying*; sold these cattle in October, 1906. (V. 54, 21424.)

The court will note that Staton had 150 cattle October 19th, 1905 (V. 16, 6395); sold 128, leaving 22 he did not sell; on page 5979, V. 16, gives two dead by October 25, leaving 20 head (V. 54, 21408); on April 15th had 16 cattle. The period between March 26th and April 15th, Staton was not allowed to give any losses, under ruling of the Court (V. 54, 21408.) On page 21419, V. 54, Staton states one cow died here. We have 19 head accounted for out of 22; one more must be added that Dr. Salmon autopsied on first visit, which was not allowed to be testified to by the court on account of *time*, as this cow was killed prior to close of defendants' case, leaving 20 accounted for; still two short, which most certainly died.

As to the care of his stock in 1906, Staton states, outside of the six head of horses used as a pasture experiment, *he gave his stock A No. 1 care, and not, as defendants construe his testimony, no extra care.* (V. 54, 21421.)

Staton said, when he saw these cattle begin to fail, *along in October, he got Bielenberg to seel them to the penitentiary people at \$18 a head; could not dispose of them to any one else.* (V. 54, 21425.)

(NOTE—The way Staton sold these cattle and the

price he got, \$18 a head, shows what their condition was.)

Says that cattle belonging to Nels Pearson died on his place during this period. (V. 54, 21420.)

Now, does the above condition as to cattle on Staton's ranch, from April to October, compare at all with conditions as stated by Defendants? The loss, failure in increase, in these 12 cows, is damage sufficient to deprive Staton of all profit, even if he did not lose any at all.

As to Dahood's testimony in regard to the feeding of stock in 1905, being under fed or otherwise, all we ask of the Court is to read Dahood's testimony which shows the bias of the witness as against Staton, a man who had no trouble with his vegetation from any cause, except poor seed, bugs, etc.; who worked Staton's garden in 1905 and for 12 months' work only had \$125, for that period of work, when he was furnished seed, horse feed and all implements, made about \$10 a month and his board, from the same lands on which Staton testifies he was paid \$2000 in gross rent in 1901, or about \$1200 clear. *The plaintiff produced A. J. Cole on the stand in rebuttal to show the feeding of these cattle in 1905, and the Master refused to allow him to testify, stating that Mr. Staton had already testified to the feeding of these cattle.*

The Court will see, by reading Dahood's testimony the utter worthlessness of the same.

Defendants state Staton lost three horses in 1906 out of 14 head.

Let us see about what Staton lost; what care, and how many.

Staton states that *after haying in 1906 he turned out six head and let them run out continuously up to the time he testified on rebuttal, or January 15th, 1907, about four months' time, of these six; three dead at that time, lost one that he was keeping in the barn.* (V. 54, 21408.)

Two aborted colts. Seven head lost as against three, as defendants state. On page 21419, V. 54, states two died belonging to Nels Pearson, died on his place in 1906. (V. 54, 21419.)

Staton states the gave these six experimental horses the same care only better than he had given horses for twenty years prior to the operation of the Washoe Smelter. (V. 54, 21426.)

Outside of these six horses he *had seven or eight kept around the barn. Would turn them out a few days and when their noses began to get sore put them up and feed them. Lost one of these.* (V. 54, 21429.)

These six horses were turned out to see exact conditions in the fall of 1906; thought they would die when they were turned out. *No one had a hand on them, just ran on the natural feed.*

(NOTE—This horse experiment clearly shows the condition in the fall of 1906. Six head turned out at a good season of the year for stock to put on flesh and four out of six died in four months, or 66 2-3 per cent loss under natural conditions, while under feeding conditions 12 1-2 per cent loss. But while a man can keep his stock alive under feeding conditions, *they eat more in a year under close feeding than they can be sold for,* that is ordinary stock, such as the average farmer raises.)

The sore nose in the horse in the Valley at the present time is the same as in 1902.

Staton states he is 42 years old; had handled horses and cattle all his life; never saw like conditions outside of Deer Lodge Valley. The symptoms shown by the horses and cattle in 1904 and 1905 are identically the same as in 1902. (V. 16, 5980.)

Sore nose not contagious. (V. 16, 5981.)

Staton gives symptoms as seen in the horses. (V. 16, 5983-4.)

(NOTE—The Court will see by Staton's testimony that live stock are stunted and are not in normal condition.)

The Defendants state Staton's auction sale was fraudulent. The Court can see by Staton's testimony on page 6035, V. 16, where the sale was advertised *from six weeks to two months in six different newspapers, as well as numbers of posters in Powell, Deer Lodge and Beaverhead counties*; no evidence in this record of any fraud of any kind or character.

The evidence of Staton shows his cattle and horses had the use of a range which prior to 1902 supported 1000 head of stock. In addition to this range Staton owns and has under lease over 3000 acres of land.

The testimony shows these stock had free access to this range in the summer, and were put into Staton's hay fields after haying; were fed an average of 2 1-4 tons of hay to the head in the winter of 1904-5, while the largest amount of hay given by any witness, states that it was necessary to feed stock cattle prior to the Washoe Smelter was 1 1-2

tons per head. And Hamner, Deft. Wit., states he has wintered cattle in the Valley on 300 pounds to the head. The only way possible Staton could have starved cattle was to have penned them up where they could get no food.

While most of Staton's losses were between Oct., 1904, and Oct., 1905, that is as to numbers, Staton's percent of loss in 1906 was as great as in 1904-1905. The defendants' counsel quote Dahood again, as to the non-feeding of these cattle, and cut worms, bad seed, and frost as the cause of the failure of the gardent. Will simply say here as to Dahood that the record shows he was born in Syria, 25 years of age, came to United States in October, 1900. (V. 28, 10856.) *First gardening he ever done was in 1902 in the fall, only five weeks, still with this limited experience of five weeks in 1902 he is willing and does swear that the garden on Staton's ranch in 1902 was fine, when the Defendants themselves admitted and paid for the damage done that year. This man is evidently testifying to things he is not qualified to testify to; and as he clearly shows his bias and prejudice, especially toward Mr. Staton.*

Defendants state Staton's losses were confined principally to this band of cattle, and to this period. The only conclusion that can be reached is that these cattle were neglected and starved.

(NOTE—The Court will see how unfairly defendants state Staton's losses, *and the only logical conclusion after all the facts as to this stock are taken into consideration, is that these cattle and horses in 1904-5-6, as all symptoms are the same. Died about the same ratio as in 1902, which year the defendants*

admit (1902) smelter poisoning and paid for the damage done, and as all these cattle of Staton's were cattle which had not been in the valley in 1902 or during the period of short stacks.

They clearly demonstrate the poisoning by smelter fumes at the present time. *Staton's hay and grasses all carry arsenic, the animal tissue of horses and cattle from this herd of stock show arsenic, and although the Defendants had bought 100 of the Staton cattle, some of which died and some were killed, they carefully avoided putting in any chamilical evidence of the tissues of these animals.*)

Defendants state some of Mr. Staton's extravagant claims are shown by the figures he gives regarding his ranch. He claims that the ranch would net him \$8000 a year.

Staton makes the following statement (page 6030, V. 16): "My ranch, stocked as it was with live stock, and the condition it was in, in the fall of 1904 (and undamaged), I could make \$10,000 a year profit; that is including the ranch and stock. On page 6070 Staton states the above applied to all the Staton ranches, which would include his father's. States on page 6070, V. 16, that his individual ranch would pay \$8000. Now let us see about this absurd statement, as Defendants call it.

First—Staton's testimony shows that he has 2640 acres of land and a state lease on 640 acres more; he has 560 acres in cultivation, that he has (V. 6, 638) 470 acres of hay land, and about 90 acres of farming land. About 40 acres of the 90 is first-class garden land.

Staton's testimony shows about 200 head of live stock on this ranch in the fall of 1904, among which live stock are two fine stallions, which he stood ofr public service,

and his testimony shows in 1904 bred the limit, or 122 mares, to these horses.

The above shows what property Staton had in the fall of 1904, and Staton does not state that prior to that time he made \$8000 a year. But Staton is like every other farmer who goes on to raw land to make a home; he starts first on a small scale, or as Staton did, on 160 acres of land, and for the first few years his income is not large, but if the farmer and live stock man is frugal, he generally increases his income as he grows older and acquires more property. Staton's testimony shows he had increased his land holdings *from 160 acres in 1884 to 2640 acres in 1901*, the year he bought the last land, and as his land holdings increased he increased his live stock. On page 6239-40, V. 16:

Sold 300 tons of hay at a profit of \$8.50.....	\$2550.00
Sold 120 tons of hay at a profit of \$5.00.....	600.00
Sold 100 tons of hay at a profit of \$8.50.....	850.00
Fed 50 tons of hay at a profit of \$6.00.....	300.00
	<hr/>
Profit on 570 tons	\$4300.00

This hay was cut on *Staton's lower ranch of 300 acres in the year of 1903 or the year the smelter closed*. Made a profit of \$2000 on 40 acres of potatoes in 1903, about the average profit on potatoes; here we have a profit of \$6300 in 1903 from 340 acres of land. If we add to this \$6300 the \$700 a year for pasturage of stock (V. 16, 5972.) (Staton states at a low estimate he made \$700 a year from his pasture from 1898 up to 1902.) Here we have \$7000 profit, and we have not touched *the profit on 200 head of*

stock or the profit from the hay and crops on 220 acres on the home ranch except the potatoes. This upper ranch, or home ranch, *cut in 1905 close to 300 tons of hay.* Staton states his gardens in the spring of 1903 (page 6022, V. 16), were practically destroyed in 1903 (V. 16, 6235.) Staton states did not get enough from his gardens in 1903 to pay for seed and weeding; total loss as to profit on his garden from the in 1903; 1903 is the only year since the operation of the smelter which Staton has been able to sell his hay and for this hay did not get any greater price than he had been receiving prior to 1902.

Let us take the profit on 200 head of stock, including the service fee of his stallions, would not \$2000 a year profit on these be a fair estimate on that, or \$10 a head average on cattle and horses, and we have \$9000 profit, with *the garden land and hay on the home ranch still to include?*

This ranch, shown by the testimony, in 1905 cut about 290 tons of hay (say with this hay we fed the stock) and still the garden profit to be included, which is the most profitable crop (about \$50 an acre in Montana.) Estimated 20 acres would give \$1000 a year more, or a total of \$10,000 a year. *Cut the whole estimate 20 per cent and you still have \$8000 a year, which is not an extra profit for a ranch situated and farmed as this is.*

Defendants state this piece of land and improvements cost him less than \$19,000. This is an unfair statement, as the Defendants only *include the price of the land originally*, and fencing and main ditches, buildings, etc., and this \$19,000 does *not include the actual improvement of the land itself.* Staton's estimate of \$10 an acre for seed-

ing to grass would increase this \$4700. And improvements to this farm land on about 40 acres on which Staton has spent a large amount on, in extra fertilization, they entirely overlook.

Defendants state that Staton put every dollar back into the ground until 1902 (V. 16, 6190), and states he was never out of debt (V. 16, 6208) until before Jan. 1st, 1902, and yet with a profit of \$8000 a year, every dollar of which was put back into the ranch, he was unable to pay the cost of \$19,000.

The Defendants' counsel again tries to mislead the Court by the above statement. Staton at no time made the statement that prior to 1902 he was making \$8000 a year clear. But specifically confines that amount to the year of 1904. If the ranch and stock was not damaged by smoke he states he could make that amount if conditions were normal. Staton, on page 6096, V. 16, states he put \$11,000 into the stock and ranch since the smoke trouble of 1902, but up to 1901 Staton's land holdings increased to 2640 acres. He had that amount of land in 1901, and it is absurd for the counsel for the Defense to advance any such theory as they have that Staton claims in his testimony he was putting \$8000 a year into the ranch prior to, or even after 1902, and instead of Staton's statements being unfair and untrue, that is only a theory of Defendants' counsel. Staton never made the statement even by inference that he was putting in \$8000 every year. As to Staton being in debt, he states on page 6207, V. 16, that he never was in debt on this ranch more than he could pay off with one crop. Staton states: *In*

the fall of 1902 my hay crop alone, if I could have sold it at the market price, would have paid every dollar I owed in the world, and I would have had \$3,000 left, and the same is true at the present time.

Does this show a serious condition of indebtedness, and when the defense gave Staton's admission he was in debt, why not give all he said, not split it up, so as to try and convey something different from what the witness's testimony shows as a whole?

We believe the Court will see, when having examined Staton's testimony, it is Defendants' counsel who is unfair to Staton, and they are the ones who make the false and absurd statements and not Mr. Staton. *Staton's testimony stands uncontradicted in this record on every point. In giving his profits on hay in 1903, he gave the parties he sold to and where sold, so that they could have been easily checked.* Defendants' counsel in stating Staton put every dollar back into the ranch, made no allowance or deduction from his profits on the ranch for the maintenance of his family, which must of necessity have been something.

If the Court will examine Staton's cross-examination as to dates of buying more land, and improving the same, he will see Staton was steadily improving in a financial way. The Defendants did attempt through *one witness, Mr. Jesse Miller*, to account in a way for Staton's improvements in a financial condition by stating it was his belief that Staton took the bankruptcy law. But gave it only as his belief. Staton stated on rebuttal that the man who made the statement that he ever took the bankruptcy law

swore falsely, *but* the only way the defense had to attack this man's testimony they have used; and that is, by the unfair and absurd statement of the counsel for the defense.

Defendants state Pat Lappin has a good sized ranch within a mile or so of the smelter; did not appear on the case in chief, but was called in rebuttal.

(NOTE—There again Defendants are stating things which are not in the record.)

Lappin's ranch consists of 160 acres, one of the smallest in the valley. (See map Defendant Exhibit); less than half of which is susceptible of cultivation. Defendant criticizes the fact that Mr. Lappin was not on in direct. Mr. Lappin was in the valley and was subject to call of the defendants. *Why did they not call him?* Conditions in the vicinity of Mr. Lappin's ranch were testified to by W. H. Allen and W. C. Staton, whose ranches adjoin Lappin's.

Section sixteen (16) or the Defendants' experimental farm, adjoins Lappin, and although Mr. Kelley, Defendant's counsel, promised to show by Jesse Miller that they would show the results on that and other farms of the defendant companies, nothing was shown as to the results of this farming on defendant's property. The principal defense of the defendants as to the vegetation of the valley farms is that the farmers of the valley failed to farm to suit the defense, and evidently the *defendants* also failed to farm to *suit themselves*, as all the record of the sales from the defendant's farming property is a few tons of hay sold to John French and about 100 100 tons sold to

themselves at the smelter, and 17 calves, *from over 17 sections of land which they were operating themselves*, and no record of a sale from any lands on which they have tenants. Evidently under these facts the farmers of the valley know better how to farm for a profit than the smelting companies.

Mr. Lappin states his crops were not as good in 1906 as in 1905. (V. 54, 21180.)

Defense criticizes the above statement, doubtless for the reason that Mr. Lappin does not give the productions for both years in tons or in dollars and cents.

Defendant's ranch adjoins Lappin's and if Mr. Lappin was not stating the truth *why* did they not call as a witness some of the employes who have been working near Lappin's ranch to dispute Lappin?

Lappin's testimony is undisputed in this record.

Defendants state Lappin sold all of his 1905 hay at \$12.00 a ton in Anaconda. (V. 54, 21182.)

Page 21181, V. 54, Lappin's hay, principally Timothy and clover, sold for \$12.00 a ton. Thos. Parker, west of Anaconda, received \$15.00 for the same class of hay in 1905, *showing \$3.00 a ton decrease in Lappin's hay from the normal.*

Page 21182, V. 54, Lappin states he raised *some* garden truck in 1906 (V. 54, 21183), which consisted of *rutabages, carrots, parsnips, onions and beets*. The Court will *note that every vegetable given by Mr. Lappin is cultivated for the root; no cabbage, cauliflower, lettuce, spinach, parsley, rhubarb, or any crop which is grown for the top is not mentioned by Mr. Lappin*, and the defendant's counsel

again enlarges and draws on their imagination, and calls Mr. Lappin's crop a *large garden*, when in fact it was not a garden at all, only the common root crops grown by most every farmer in any country.

Defendants state Lappin practically told the Court nothing about his place, except that he was getting good prices for his products, and the presumptions, of course, is that he had good crops.

The above statement is another of *the opinions* of counsel for defendant. The record shows as follows:

The condition of my live stock is bad. (V. 54, 21179.)

Their condition at this time, about the same as in 1902. (V. 54, 21189.)

They are falling off and getting poor and worthless. (V. 54, 21180.)

The crop is falling away; not as good in 1906 as in 1905.

Lappin lost three head of stock out of eleven since April 15, 1906, to date. (V. 54, 21179.)

Had stock posted and examined; these I did not count. (V. 54, 21171.)

The Court will see the analysis of the tissues of animals from Lappin's ranch. (Harkin's and Swain's testimony.)

Lappin's stock has been failing ever since the erection of the smoke stack.

In summing up Lappin's testimony the counsel for defense carefully avoid any mention of Lappin's stock losses or conditions of his stock, and as stated by Morgan Evans, "the stock on a man's farm is the thermometer by which he judges his vegetation."

Lappin states (V. 54, 21182) potato crop is getting less and less; less in 1906 than in 1905. Sold some *hay in 1906 for \$13.00. Parker, west of Anaconda, in 1906 sold for \$18.00 hay of same class, showing a difference of \$5.00 a ton as against valley hay (V. 54, 21184-5); some days we sell our hay and some days we don't; some days we had to bring it home.* Has 1906 hay yet unsold, Jan. 1907.

(NOTE—Showing Lappin has not ready sale for this hay at even \$5.00 a ton less than Parker gets)

Lappin states if it was not for the smoke his crops would have been better. (V. 54, 21185.)

All the animals on his place are sick. (V. 54, 21188.)

Lappin states he knew his animals were smoked without any one telling him. A wooden man would know. (V. 54, 21189.)

Lappin states he gives his stock better care than he ever did; keep them up; feeds hay and bran and tries to keep them alive all he can. (V. 54, 21189.)

Defendants quote Mr. Bigrass as supporting his family on a garden of 12 acres, and this place adjoins Staton on Willow Creek. (V. 54, 21192-21194.)

Mr. Bigrass' testimony (V. 54, 21193) shows his family consists of wife and two children, one of which works in the garden.

Is it very strange that a man can make a living on 12 acres of garden, when all the work is done by himself and family, *or in other words, make board and clothes?*

Defendants quote Bigrass as stating he lost three horses in the latter part of 1906 (V. 54, 2119.) On cross-examination it develops he lost only one in 1906, and two pre-

viously, one a thirty year old horse and one a thirty year old horse that he bought from Staton that had a sore back (V. 54, 21197), and one he killed on account of its age (V. 54, 21197.)

The statement of the defendants as to Bigrass' horse loss taken as a whole is entirely different from what the testimony shows, and does show as follows:

Bigrass had four horses in 1906. Three died. (V. 54, 21191.)

Bigrass had one horse and bought one and lost three inside of two years. (V. 54, 21194.)

The three I lost I bought inside of the last two years.

The horse I bought from Staton died in 1905. (V. 54, 21195.)

(NOTE—Not a thing in the record as to this horse being 30 years old that was bought of Staton. *This horse died in 1905, and was not included in Bigrass' loss of three head in 1906, even if a horse has a sore back, and we are unable to find any such statement in the record.*)

(NOTE—One of the horses he got from Edwards was 28 or 30 years old, and Mr. Edwards, while on the stand, called her "Bessie." This is the only horse Bigrass had that was of an age sufficient to interfere with its usefulness, and Mr. Bigrass states on page 21197, V. 54, that he destroyed her on account of her age, in 1906.)

A pony or a small horse belonging to the girl died in April, 1906, six or seven years old. (V. 54, 21197.)

The next one lost was "Bessie," or the old horse that he killed. This was the old one, the one that was 28 or 30 years old. Had not worked her for over a year. (V. 54, 21197.)

“Johney,” or the next one died in the fall of 1906. He worked him up to the day he died. Died in the barn. Fed him hay, oats and some bran. He was about 12 years old. (V. 54, 21198.)

Horses got poorer and poorer in the stable, and I turned them on grass and they got poorer and poorer. (V. 54, 21197-8.)

Fed Valley hay; bought some of it from Staton. (V. 54, 21197-8.)

The Court can see by the above quoted testimony that Bigrass lost three horses in 1906, two of them good horses, and one he killed, and the Staton horse *was not one of these three, nor was his age* given at thirty years; no age was given for this horse, and he died in 1905. And Mr. Bigrass' testimony shows he lost four of the five horses in two years, three of which he lost between April, 1906, and January, 1907.

Loss of normal horses, 50 per cent.

Loss of all horses, 75 per cent.

Has one horse left.

Not a member of the Farmers' Association. (V. 54, 21199.)

Defendants quote J. O. Allen as having a ranch on Mill Creek, near the Smelter, appearing first on rebuttal and testifies to losing two horses in 1906 and spoke about his crops not being as good as in former years (V. 54, 21175-21167), and has no trouble selling his hay for \$12.00 a ton. Makes no complaint as to his crops and gives no figures.

To show the unfairness of the above statement we give Allen's actual testimony.

My crops are not as good as in previous years. (V. 54, 21167.)

My stock that I had on the ranch in 1906 did not do good. (V. 54, 21167.)

I had five horses and four cows on the ranch in 1906. Lost two horses in December, 1906. (V. 54, 21167.)

(NOTE—The Master would not allow any testimony on rebuttal to sock losses prior to April 15, 1906. Allen's loss of stock in 1906 *about 22 per cent, including all stock or 40 per cent on horses alone.*)

These horses that *died in December of 1906 were brought from the Big Hole in July. (V. 54, 21171.)*

Two-thirds less stock in the valley at present than in 1902. (V. 54, 21170.)

In the neighborhood of my ranch in 1900 was 1000 head and gives the owners. (V. 54, 21172.)

My place is right on the range. (V. 54, 21174.)

There has been no fencing done on the Mill Creek range since 1902. (V. 54, 21176.)

Range there at the present time good. No stock on this range at all. I keep my stock in French Gulch, because I cannot keep them in the Deer Lodge Valley. (V. 54, 21178.)

(NOTE—Allen's testimony shows that he cannot keep stock in the Deer Lodge Valley, and has to keep them in French Gulch. The range, that is the Mill Creek range, which used to support 1,000 head of stock in 1900, now has no stock on it at all. No fencing has been done on this range since 1902, and notwithstanding the fact that Allen's ranch lies adjoining this open range he has to take his cattle to French Gulch, 20 miles away, in order to protect them from the

smelter fumes. He shows a loss of the stock he did keep there in 1906, from April 15, to January, 1907, of 40 per cent, which loss is of work horses. States his crop is not as good. *He gets \$12.00 a ton, which is \$6.00 a ton less for his timothy and clover than Parker, west of Anaconda, gets, and about the same amount less than timothy and clover hay is bringing, shipped in from outside points.*

Price of outside hay, timothy and clover, in Anaconda is \$16.80 a ton in car lots, and cost at Bozeman, \$14.00 a ton on the car f. o. b. Bozeman in 1906. V. 32, 12593) Conyne's testimony, Deft. Wit. The record shows no prices for outside hay after July 1, 1906, so we take the nearest date. *If Allen's testimony shows no complaint as to conditions in the valley in his vicinity, we don't understand the English language.)*

The above references as given by Defendants to the testimony of the witnesses for complainant show that in no single instance have they given the testimony fairly or according to the Record, and the actual testimony of these men, as given in the record is as much different from what the defendants attempt to show as day from night.

And instead of the farmers having received good crops and small stock losses and farmed with as good results as they ever had, their testimony shows they have been getting less and less crops each year, and their stock is decreasing in number each year until they are practically out of stock raising business.

All the farmers in the Mill Creek and Warm Springs Sections of the Valley have entirely ceased to raise any stock on account of the death, abortions and failure to breed.

Thomas, Defendant's witness, states there is *no stock*

on Warm Springs Creek at the present time, *only a couple of dairies*, (17998), V. 46.) The testimony of all the witnesses for complainant show no stock on the Mill Creek region in 1906, and although the defendants had large numbers of stock in the Deer Lodge Valley in 1906, they allowed none of them to pasture on this range, where the testimony shows an entire destruction of the live stock industry.

Mr. McCartney counted all the stock on all of the ranches of the Farmers' Association and the number he found was as follows

A total of 4382 head of stock, number of cattle 3581, but among all the cattle only reports seeing 28 calves, and no colts mentioned among 801 horses. Sheep given as 5400; 4000 belonging to Geo. Johnson and 1400 belonging to Jerry Ryan. From these 3581 cattle must be taken the 66 heard of steers on Frust Ranch and 205 cattle on the Jacobson Ranch, total 271 cattle to be deducted from 3581 leaves 3310 head of cattle on the ranches of the Farmers' Association. This 3310 head are a total of all cattle including all classes—milk cows, calves, beef steers and range stock.

Prior to the operation of the Washoe Smelter the ranches of N. J. Bielenberg, Elliott, Quinlan ranch, Williams Estate, kept more *stock cattle* than McCartney found on all the ranches of the farmers' association.

Bielenberg, (V. 12, 4413,) as high as 1,500 cattle. Elliott, (V. 11, 4322.) 519 cattle. Williams Estate (V. 16, 6326), Staton testimony, 400. Quinlan (V. 7, 2645), 700 cattle. Total, 3119 cattle.

On page 2645, V. 7, H. J. Quinlan states the Quinlan's Estate which belonged to Jno. Quinlan and the father of H. J. Quinlan, divided their cattle in 1902, and Mrs. Quinlan's share was one half, 350 head, so we take 700 cattle as the total in 1902, on these ranches prior to 1902.

McCarthy's testimony shows *over 300 milch cows in this 3310 head*, so we find *on four ranches immediately prior to 1902 more cattle than McCartney finds on all the Farmers' Association ranches*, and still the defendants would try and make the Court believe the Farmers of the valley are conducting their stock business with as good results as they did prior to 1902.

The Court will further notice by the testimony of McCartney, Defendant's Witness, on pages 10669, V. 27, Bielenberg had 550 cattle, page 10672, V. 27, Elliott 321 cattle; total on these ranches, 871 cattle *or 1/4 of all the cattle on all the ranches of the Farmers' Association is found on two ranches*. And on the Bielenberg ranch, Mr. Bielenberg's testimony shows on page 4412, V. 12, that *all of these cattle, except 40 head which he now has, he has bought within the last three months, (March 1, 1906)*, so even this 550 head does not belong there but are cattle just bought, and as Bielenberg states on page 4434, V. 12, he does not breed any more.

Quinlan's testimony shows all their stock taken out of the Valley; and William J. Even's and J. O. Allen's show the same.

Day, Defendants' Witness, shows the same; Ryan's the same; Staton sold out and quit; William's Estate shows no cattle. In fact, every witness for the complainant shows

they have no stock in comparison to what they had prior to 1902, and every witness for the complainant also shows the decrease in crops, but none for the defense show an increase except Thomas Parker, west of Anaconda, and when the Counsel for the defense states the testimony shows the Farmers of the Valley are conducting their farming and stock raising business with as good success as they ever had, they are stating only their conclusions, and not what the record shows, but the record does show that the farmers of the Valley in the Smoke Zone, are conducting their business at little or no profit, and the record further shows that many of the ranches have no crops harvested at all, and on many more only a partial crop cut, and numbers of the Farmers, men who have lived there for years prior to the erection of the Washoe Smelter, have left the Valley.

The defendants Counsel in selecting the witnesses of the complainants to the number of twenty-four, overlooked K. D. Smith, Angus Smith, Ed. Wolf, Bart Para, Frank Threlkeld, Eph Staffenson, Harvey Showers, and B. Howells, *who live and own property in the immediate vicinity of the Bliss Ranch.* We also call the Court's attention to the testimony of Dan Thomas, Fred Hengell, and Chris Jorgensen, defendants witnesses, who live on, and own property on Warm Springs Creek, and in the immediate vicinity of the Bliss Ranch. Hengell has four or five head of stock; Thomas sold what few he had and buys hay to feed his horses; Jergensen sold most of his stock.

The testimony of all of these men who live in the vicinity of the Bliss Ranch shows a total destruction of the

raising of live stock. All of the stock that is there now is a few work horses and dairy cows.

K. D. Smith's testimony shows that there is not 1/2 of the dairy cows on Warm Springs that there was prior to 1902, which shows the dairy industry has decreased to that extent.

The defendants state, without a doubt, the plaintiff has selected men to testify who have sustained the largest stock losses. The Court will see by the testimony of the witnesses for complainant *that many of them were not engaged in the stock industry, or had ew flive stock in 1904, 1905 and 1906, and the witnesses were so called as to cover all portions of the Valley, and all conditions of that part lying in the Smoke Zone.*

Defendants continually quote the per cent of stock losses in Montana, and they include Colorado, and state the per cent of losses given by Dr. Gardiner is the normal loss of horses in Montana, or a loss of 10%, and in order to show that the loss in horses in the Deer Lodge Valley is not greater than 10%, Dr. Gardiner states it on information *which he claims* was given him by the following men, who belong to the Farmers' Association, to-wit:

	No Hohses.	Died.	%of Deaths
Jones, Jno. E.	9	3	33 1-3
Evans, Wm. M.	7	0	0
Parrott, Geo.	31	6	19
Boland, Thos.	5	2	40
Stephens, Wm.	12	0	0
Bielenberg, N. J.	92	7	7.6
Notstine, B. F.	14 (1904)	4	16

	25 (1905)	2	8
Watson Bros.	23	2	9
Ryan, Jerry	17	0	0
Schwend, C. E.	28	8	29
Bennett, Jas.	9	0	
Elliott, Y.	6		
Norton, Mary A.	50	5	10
	—	—	—
	338	39	

A loss of 112%.

Dr. Gardiner was questioned as to the *losses of over 60 members* of the Farmers' Association, in regard to their horse and cattle loss, *and could only give the above number on horse loss, or 13 out of the 107 members*, and there is not *any testimony in this record to show that the above is correct, on hearsay*, and he bases his estimate of the per cent of loss of horses in the Smoke Zone on 13 out of 107, or takes the statement of about 12% of the farmers and applies it to 100 per cent. In order to be able to give any accurate data he should have given, at least, 50% of the men instead of 12%. And Dr. Gardiner in his estimates *carefully avoids the Warm Springs Creek, and the Mill Creek part of the Deer Lodge Valley.*

Dr. Gardiner states on page 16895, V. 43, that the table of losses given above was for the twelve months preceding, August, 1906, or the time he was on the stand, and states on page 16896, V. 43, he *made no attempt to make a record of the cattle*, and also states it is impossible on the information he obtained.

Dr. Gardiner's attempt to show that the loss of horses

in the Valley, is normal by *the limited number of 13 men, is worthless and absurd.* He has failed to give a great many of the heavy losers of horses during this period, to-wit: B. Para, W. C. Staton, Jno. Karlock, Mr. Malinak, Morgan Evans, Eph Staffenson, P. P. Roberts, and Chas. Jones. Dr. Gardiner, *doubtless, takes the horse loss as an illustration for the reason that only a very few horses are left in the Valley, and what few the farmers have are mostly work horses, and are kept in barns, and corrals, and not allowed to pasture, but wherever you find a breeding herd of horses in the valley you will find a large percentage of deaths and failure to breed.*

Every man on the stand for complainant in the vicinity of the Bliss Ranch or in the vicinity of Section 16, or Mill Creek, show a great per cent of loss in his horses. The total number of horses as counted by defendants witness, McCartney, *is 801 on all of the ranches of the Farmers' Association, or an average of less than eight head to the ranch, while the average amount of land for each man, owned by the Farmers' Association is 500 acres, and McCartney is the only man on the stand who made a complete count of the horses and cattle on the ranches of the Farmers association, it must be taken as being about correct, and these figures show only about eight horses for every 500 acres of improved farming lands.*

Does not the above figures show an almost complete destruction of the horse industry?

This 55,000 acres, as given by Staton and Bielenberg *does not include any range land, but is the amount of enclosed farming and pasture lands, and further shows another fact that most of these horses are work horses, and*

must necessarily be given extra care over range stock on account of their value and the work that is required of them.

The above figures will doubtless explain to the Court why Dr. Gardiner took horses to illustrate stock losses in the Deer Lodge Valley.

Dr. Gardiner's, 13 men, bred 62 mares and got 32 colts, about 50% of 30% under normal. His death loss of 10% is 7% more than that given by Dr. Knowles, who states his information was obtained during the 12 years he was State Veterinarian of the State of Montana, a man who was gathering statistics on this matter when Dr. Gardiner was a boy in Canada. Mr. Nick Bielenberg, a man who has been in the stock business for 40 years, and who states he has handled hundreds of thousands of head of stock, gives the stock loss in Montana at 3%, while Dr. Gardiner's experience up to the time he went on the stand in this case was limited to about 250 head, for a period of one year, and on this limited experience and knowledge of stock in Montana, he will state 10% a normal loss in horses in a breeding community. Ten per cent might be a normal loss in cities where no breeding is done.

If the theory of the defense was correct, take a herd of horses, 100 head of horses, mares, colts, of all ages and geldings, a breeding herd such as is found on a ranch or range, and keep it for five years, under the figures of a 10% loss and a 60% colt crop, allowing 25% of the entire band of horses to be mares of a breedable age (which is over average), and what is the result? If he had not sold a horse at the end of five years, he would have only about 126 or a net increase of 26% in five years, 5¼% increase a

year, taking into consideration the feed and care required for this number of horses for five years, and average the keep of these horses at \$10.00 a year, and see what the extra 26 head has cost the horse raiser—\$5,000.00 or about \$200.00 a head—Under the figures of births and losses given by the defense *there would not be a horse left in the United States in 50 years, unless every mare born was used for breeding purposes, and bred continuously.*

Now take the complainant witness estimates, 3% loss and 80% colt crop, what does it show? *At the end of five years he has about 210 head*, if he has not sold a horse. Is not the last more reasonable—an increase in a breeding herd of 20% instead of 5¼%? Under defendants figures 5¼% would be all a man would get on his investment if it cost him nothing for feed and care, while under complainants figures, allow 10% for feed and care, and it cannot be done for less) and we have 10% profit left.

Which statement is the most reasonable?

Let us take another illustration :

Start a man in the horse business and *give him 50 mares to start with, under 10% loss and 60% breeding.* Let him keep every mare colt; sell his geldings at four years of age, and as soon as a mare gets to be four years old add her to his breeding mares, and what has he at the end of ten years—about 47 mares suitable to breed—allowing ½ of the colts born to be mares and ½ horse colts, and *at the end of 15 years he would have, under these same conditions, only 60 mares of breedable age, or an increase of 10 breedable mares in 15 years or an increase of less than one breedable mare a year from 50 mares that he started with, and to*

have this amount he must not have sold a care colt in 15 years.

Defendants Witness, Dr. Gardiner, gives 10% loss and 60% colt crop normal for Montana. If these were normal conditions, every mare born would have to be kept and bred every year or the horse industry of Montana would be a thing of the past in a few years.

The losses in the Deer Lodge Valley exceed 10% in deaths, and the breeding is not 40% and the total number of horses belonging to the Farmers' Association of Deer Lodge Valley as counted and given in the record by defendants witness, McCartney, show only 801 horses of all kinds, or an average of one horse to every 65 acres of land owned and fenced in the Deer Lodge Valley.

Staton's horse losses shows in one year, from January, 1905, to March, 1906, a loss of 16 out of 30 head, over 50%. Bred same year 20 mares, got 6 colts. 30% colt crop. (V. 16, 6362.)

Staton's testimony show on page 6374, V. 16, he bred 122 mares in Deer Lodge Valley and vicinity and only got 42 colts, and many of the colts he got were from mares kept in Anaconda, which were not allowed to graze.

Staton's testimony shows *the only two stallions that stood for public service in the Valley in 1894, was shown by this record, and the per cent of mares bred that foaled was 34.4, less than 1/2 of the normal.* Staton's testimony shows he bred 100 head for parties in the valley and vicinity.

Staton states mares should have at least 75% to 85% of colts. (V. 17, 6376.)

Staton has quit standing his horses in the Deer Lodge

Valley on account of the mares failing to breed. On page 6362, V. 16, Staton states you cannot get enough colts in the Deer Lodge Valley to pay for the horses oats.

(NOTE—Here we see the *only man who kept stations for public service in the Valley*, and who was compelled to send them away, although Station states he bred the limit to his two horses for the season of 1904, or 122 mares to two stallions. He did not send them away because there were not mares to be bred, or because he could not get sufficient mares for his stallions, but because the *mares would not breed.*)

The following excerpts in the testimony in regard to the number of cattle and horses and their condition prior to, and since the erection of the Washoe Smelter, will doubtless give the Court a very clear idea of the situation in the Deer Lodge Valley.

ANGUS SMITH, Comp. Wit., page 643, V. 2e prior to the erection of the Washoe Smelter, the condition of the cattle was good.

Smith states, most of my cattle got sick and died on me in the fall of 1902; cows aborted their calves. (V. 2, 647.)

Quit the business and left the ranch. Some of my horses died and I sold some. (V. 2, 650.)

On page 641 Smith states he has lived on this ranch for thirteen years, prior to 1902.

I might have lost three or four horses and six or eight cattle in seven or eight years time. I kept a dairy prior to 1902. Kept as high as 140 head of cattle, besides some young stock. (V. 2, 651.)

. . . I lost 37 calves out of 40 cows in the fall and winter of 1903 and 1904. I lost four cows. Left the ranch in September, 1904. (V. 2, 652.)

(NOTE—The Court will notice that this loss of Smith's was *within the period of twelve months* or between September of 1903 and September of 1904. When he left the ranch his losses show almost a total loss of calves and 10% of grown cattle.)

KENNETH D. SMITH, Comp. Wit.:

Kenneth D. Smith moved to his ranch in 1898, or the K. D. Smith place. (V. 2, 7685.)

There was no sickness among the live stock, cattle or horses, of the Deer Lodge Valley prior to 1902.

Prior to 1902 no percentage to speak of by abortions. (V. 3, 769.)

First cow died the latter part of September, 1902, and up to the 20th of January, 22 cows died, five or six colts, and four or five horses. (V. 3, 774.)

Moved this stock to Jefferson County; all that died of this stock after being moved there died within a period of two months. (V. 3, 775.)

In the fall of 1904 my cattle were worse affected than in 1902. In August, four aborted calves; in September 6 or 7. Fourteen died before Christmas and I sold 22 more for \$150.00. Most of these 22 head cost me \$50.00 apiece. (V. 3, 777.)

I left the ranch November, 1904. V. 3, 765.)

(NOTE—The Court will see by the Record that this loss of Smith's occurred between June of 1903 and November of 1904.)

Smith gives the total number of cattle that he had on June 10, 1903, as 56 head; that is milch cows. He states on page 777, V. 3, that he left sixty-two head in pasture in the fall of 1904. (V. 3, 776.)

(NOTE—This testimony of Smith's shows that his ranch at that time was not conducted strictly as a dairy ranch, but in *addition to dairy cows he had 62 head of stock cattle or dry cattle that he allowed to pasture*, and the Court will *notice that his stock losses were practically confined to this 62 head and not to his dairy cows.*)

On page 783, V. 3, Smith states that four of his colts ran on the *Bliss Ranch*, from July until October, 1905, *were sick and had sore noses.*

E. D. WOLFE, Comp. Wit. :

Two cows slunk their calves; one calf died since coming to the Bliss Ranch. (V. 3, 954.)

Wolfe loses one horse; one colt and eight calves in 1905 on Mill Creek. (V. 3, 802.)

FRANK THRELKELD, Comp. Wit. :

Frank Threlkeld lost about 35 head of cattle under the short stack operation; the rest of my cattle I took out of the Deer Lodge Valley. (V. 3, 965.)

I have no stock, and if I had kept them there I would have lost them. (V. 3, 974.)

The cattle don't breed since the erection of the Washoe Smelter. (V. 3, 980.)

Stock was healthy and all right prior to the operation of the Washoe Smelter. (V. 3, 964.)

States his horses are all sick at the present time. He hasn't one fit to work. (V. 3, 968.)

The three cows he has look sick, thin and poor, and give no milk to speak of. (V. 3, 969.)

States that if cattle and horses are not kept up and fed hay they will die. (V. 3, 974.)

Cattle don't seem to breed at all. *Had two calves since 1903.* (V. 3, 980.)

The calves look bad. (V. 3, 981.)

(NOTE—This man shows no losses (had shipped his breeding stock away) but does show that he keeps his cattle and horses in barns and corrals, feeds them all the hay they will eat, and still his horses are not in workable condition and his cows which are only fed hay give no milk to amount to anything.)

BYRON HOWELLS, Comp. Wit.:

Byron Howells lived near the Bliss Ranch continuously for eighteen years. He was in the dairy business in 1902.

His stock got sick and died. The majority of the cows slunk their calves. He had 35 cows at this time. He lost 10 head of milch cows. (V. 3, 1008.)

This condition didn't appear before the operation of the Washoe Smelter. Stock was always healthy prior to that time. (V. 3, 1013.)

Eramus Jenderson is on my ranch at the present time. He had 25 cows on my place. He keeps them in the stable and feeds them alfalfa hay from down the Valley, also feeds bran and condition powders and flour. (V. 3, 1016.)

(NOTE—The Court will notice in what condition they are kept.)

During 1904 I turned out a span of horses. They ran out a month; they had sore noses. I concluded from that it was of no use to keep stock on the ranch. *Jenderson's cattle looked tough. They were losing their calves, some of the calves only living a day or two.* (V. 3, 1021.)

All horses running out around in my vicinity now, have got sore noses. (V. 3, 1022.)

BART PARA, Comp. Wit. :

Bart Para came to Deer Lodge Valley in 1898.

Lost two horses in the Spring of 1905. They had sore noses and died in fits. (V. 3, 1073.)

In 1904 and 1905 I lost six head of cows and one yearling. (V. 3, 1078.)

Had two slunk calves. (V. 3, 1080.)

We didn't get the same percentage of colts from the mares, nod calves from the cows as we did formerly.

I bred five mares; two slunk their colts. I got no colts at all. (V. 3, 1113.)

LAVINIA J. HENSLEY, Comp. Wit. :

My horses all died in 1902 and 1903. I have not restocked the ranch. (V. 3, 1149.)

WM. F. STEVENS, Comp. Wit. :

Age 36 years and has lived on the Valley all his life. (V. 9, 3217.)

Never saw this sickness prior to the Washoe Smelter. (V. 9, 3221.)

The stock always did well and were in good condition prior to the operation of the Washoe Smelter. (V. 9, 3226.)

The stock I have now, I am keeping them shut up in barns and corrals, feeding them hay, bran and oats. I will not allow them to run; if I did they would get sick and die. (V. 9, 3227.)

I lost one horse the winter of 1903. My calves were weak when born, and some of them die. (V. 9, 3221.)

Cannot raise stock at a profit on the ranch. (V. 9, 3228-9.)

Stock always in good condition prior to the operation of the Washoe Smelter. (V. 9, 3236.)

I have lost some calves since 1903. Three are dead that were born alive, and three abortions. (V. 9, 3253.)

These deaths and abortions were confined to the range herd, which he gives on page 3234, as 35 head of cows, calves and sters. No abortions in my dairy herd. (V. 9, 3254.)

I lost two horses between 1904 and the present time. (V. 9, 3257.)

States he lost four head out of the 15 that is included in the settlement of 1902 and two died in 1903; one in 1904 and one in 1906. (V. 9, 3259.)

NICHOLAS A. LIFFRING, Comp. Wit.:

First noticed sickness of stock in the fall of 1902. He continued to lose calves from the fall of 1902 up to the spring of 1905. Some abortions before maturity; some live an hour or so, others live a week or two. The ones that lived were weak and didn't do well. (V. 9, 3284.)

The horses had sore noses; mares didn't breed; bred every year but have no colts. (V. 9, 3285.)

I quit the dairy business in the Spring of 1905; could not make it pay. (V. 9, 3286.)

I never fed my horses in the winter time prior to the operation of the Washoe Smelter. They looked pretty well. I have ten horses and one cow on my place at the present time. (V. 9, 3292.)

I have raised one colt in the last four years. (V. 9, 3293.)

Let no stock run out in the Fall and Winter; if we did they would all die. (V. 9, 3297.)

We cannot keep live stock and make anything out of them because they don't increase. (V. 9, 3298.)

I sold my stock in the Spring of 1905 in March. These cattle had not been pastured prior to the time I sold them. (V. 9, 3324.)

I. got \$16.50 a head for them. (V. 9, 3325.)

(NOTE—The Court will notice the price received for these cattle in the *Spring* of the year is \$16.50 a head. This price speaks louder than words as to the condition these cattle must have been in.)

Liffring states he sold 78 cattle. On page 3328, he shows he had in the Fall of 1902 sixty-five head of cattle, showing his herd only increased in two years 11 head, a breeding herd. (V. 9, 3325.)

(NOTE—Is it any wonder that Liffring sold these cattle at \$16.50 a head and quit the business?)

He shows he has only sold seven head of cattle from 1903 up to 1905. (V. 8, 3329.)

On 3330 he states he was offered \$75.00 *a head for some of these cattle before they were damaged.* He sold these same cows to Bielenberg for \$16.00.

He lost eight horses from the first of March to the middle of October, 1903. I have lost no horses since then. We keep them up, only allowing them to pasture from about June to the first of November. (V. 9, 3336.)

The horses I have on my place are work horses, except one colt. The horses won't stand the work. (V. 9, 3337.)

(NOTE—The Company, doubtless, in estimating the percentage of stock losses in the Valley took only the number of deaths of grown stock as testified to in the record, or the losses of about 40 of the 107 farmers of the Farmers' Association, and took as the number of stock in the Valley all the cattle and horses on all the ranches of these 107 men, 67 of whom did not appear to testify in this case, and in no instance or in any way is the stock losses of these 67 men shown in this Record.)

The Court will further notice that many of the witnesses who did testify *had disposed of their stock at about the time of the completion of the large stock* and only had a very few left upon their ranches. Their testimony shows that *these few which they did keep were kept in barns and corrals* and not allowed to run upon the pastures and eat the forage thereon.

In the Company's estimate of the stock loss they take the stock of the entire Valley as to numbers and apply only the numbers of deaths given in the record. We propose to take the numbers of stock owned by the men who testified and their losses.

DANIEL GRIFFITH, Comp. Wit. :

Paid Griffith damage to his sheep August 22, 1902. Griffith quit the business. He had 1500 sheep in 1900. When I sold them I had about 300 left. I ascribe their sickness and death to the smoke and ascribe part of the loss and sickness to the old works. (V. 9, 3385.)

Sickness to the sheep was worse after the *new works started up. They commenced dying then.*

Griffith has 8 horses and 3 cows. (V. 9, 3366.)

Griffith keeps up his stock and feeds them hay. (V. 9, 3366.)

W. P. ROBERTS, Comp. Wit.:

Cows do not produce calves. *From 1904 to 1906 I have lost 50 animals. Great abortion among the cattle. (V. 9, 3398.)*

Bred four mares and got one colt. (V. 9, 3399.)

In August, 1903, I had 22 cattle. (V. 9, 3442.)

(NOTE—On this page Mr. Kelley, Defendants' Counsel, objected to an answer in answer to a question as it tends to vary the terms of a written contract, still we find Defendants argue strongly that they paid no damage to crops in 1902, when every release for damages this Record introduced by Defendants show that they paid damages in every case, for crops.)

WM. J. EVANS, Comp. Wit.:

I have 50 head of cattle which I keep in French Gulch in the summer and feed them in the winter in the Deer Lodge Valley. Not allowed to pasture in the Deer Lodge Valley. (3481.) (V. 9, 3472.)

Keep horses in French Gulch except six head. (V. 9, 3478.)

(NOTE—Doubtless the cattle and horses are counted as Valley stock by Defendants in taking their per cent. Evans states positively he can't keep stock in the Valley. *They would all die if he did so. States he has tried it and he knows.* His stock loss is small, as stock are only kept in the Valley during the feeding period.)

Cows lose their calves, and most of them born are weaklings. (V. 9, 3486.)

(NOTE—This testimony shows even when cows are not allowed to pasture and are fed all the hay they can eat, still they sink their calves.)

One cow died in the fall of 1905 in French Gulch. Was

a Deer Lodge Valley cow and failed all summer. (V. 9, 3511.)

States he has had several horses die since 1903. (V. 9, 3513.)

Breeds no mares at the present time. (V. 9, 3515.)

In the Winter of 1903 and 1904 cows aborted about 36 calves. (V. 9, 3516.)

C. E. SCHWEND, Comp. Wit.:

Pastured horses in the summer of 1905 in a field of alfalfa, about 45 acres. (V. 9, 3555.)

Had 30 horses in March, 1906; sixteen mares. (V. 9, 3562.)

Bred sixteen mares in 1904 all in foal. (V. 9, 3563.)

Have ten colts left. *Three died after they came; three must have slunk their colts.*

On page 3564, V. 9, saw the slung colts and three of the 13 that came alive died, or six out of the sixteen lost, or about 4% loss in colts in 1905.

Gives here a two year old which died in 1905. (V. 9, 3564.)

Had three colts in 1904, which came alive. All dead now but one. Lost two colts of 1904 crop; two aborted in the stable. One mare that lost her colt in 1904 lost it again in 1905. The other mare is dead. (3566, V. 9.) This mare died in the Spring of 1905. (V. 9, 3565.)

Only an occasional abortion in our mares prior to 1902.

(NOTE—Testimony shows that Schwends had left their ranches and moved to Bridger, Montana, and taken all stock away in 1906.)

JOHN QUINLAN, Comp. Wit. :

Kept 130 stock cattle in 1901. (V. 9, 3582.)

Turned out in the Spring of 1904 one hundred and five cows and fifteen calves. In the Fall when I brought them in I only had nineteen calves. (V. 10, 3585-6.)

(NOTE—This shows he only had nineteen calves for the entire crop of 1904 on an 80% crop which is the lowest calf crop for the Valley. He should have had eighty-four head or a loss of 63 calves through abortions or failure to breed. (3588, V. 10.) On page 3590, V. 10, cows have not raised calves since 1902.)

At the time of giving his testimony he was keeping on the ranch only 20 or 25 cow stock, 3587, V. 10, ten or twelve horses. He feeds them all the hay they can eat. (V. 9, 3586.)

Horses were so badly affected in the Fall of 1905 I sent them away to Rock Creek.

(NOTE—Rock Creek is about 30 miles west of Anaconda.)

Eight head of horses died since the Washoe Works. (V. 10, 3589.)

(NOTE—He don't sub-divide the time of the deaths of these horses.)

Bred six or seven mares in 1904 and got five live colts. One died and one aborted. In 1904 from the same mares I got two live colts. (3614, V. 10.) He is sure the mares were in foal by their looks; that is the six or seven, showing by his testimony that the mares lost their colts. (V. 10, 3614.)

All horses sent to Rock Creek had sore noses. Horses on

the ranch at this time are not in good condition. (V. 10, 3621.)

Bred seven mares in 1903 and got one colt. (V. 10, 3631.)

Lost a gray saddle horse which went crazy and knocked down fences. It was dead when found. Lost this horse about one year ago, or about March, 1905. (3633, V. 10.) (V. 10, 3631.)

JOHN BOHN, Comp Wit. :

Cows abort and the calves are weak. (V. 10, 3643.)

Had several mares in 1905 *slink their colts*. One colt *died*. *Has one crazy horse on the ranch now. He took stock off of the pasture altogether only allowing them to go to water.* (V. 10, 3643.)

He has twelve horses. (V. 10, 3702.)

Got one colt in 1905 and bred four mares. (V. 10, 3696.)

Has three milch cows. (V. 10, 3698.)

Bohn had 25 cattle in 1902. (V. 10, 3704.)

JOHN MARTIN, Comp. Wit. :

Has 15 living horses of all ages; *three dead*. (V. 10, 3718.)

Has eight cows and three calves in March, 1906.

Stables the cows and feeds them hay and bran.

Some of the calves we get will live and some of them die. They are puny and sickly. (V. 10, 3720.)

Have lost eight or ten cows and ten or twelve calves in the last two years or 1904 and 1905, which I saw but I lost some calves which I did not see. (V. 10, 3720.)

I bred four or five mares every year, two colts being the

most I got. Last year I got three out of five. Colts were not healthy, but were weak.

I let no horses run about but fed them hay and some bran. Horses have sore noses. (V. 10, 3722.)

The calves on the ranch at the present time in poor condition. Does not allow cattle to run out, but feeds them all they will eat. (V. 10, 3723.)

No sickness among stock prior to 1902. (V. 10, 3728.)

At the present time if cattle are allowed on the pastures and ranges they get sick and die. They have sore noses and such things as that. (V. 10, 3729.)

I had 68 head of cattle in 1903, and about 12 or 15 horses. (V. 10, 3756.)

He has been decreasing his herd ever since 1903, and only keeps milch cows at the present time. (V. 10, 3757-8.)

(NOTE—He has gone out of the stock business.)

One mare died in summer of 1905. (V. 10, 3760.)

W. H. ALLEN, Comp. Wit.:

He lost three horses, two cows, and two calves in the Fall and Winter of 1902 and 1903. One cow and two calves died. Lost another horse in the summer of 1905. (V. 10, 3776.)

Had five head originally or six head of horses which I have owned since I owned the ranch. (V. 10, 3778.)

Thos. Rusk, my renter, had a team and a colt or two when he came to the ranch in the Spring of 1904. In the fall he had to hire a team to take his stuff to the market. His team died. (V. 10, 3783.)

My renter had three or four horses and they all died there.

(NOTE—This place is 1½ miles from the smelter.)

This man left the ranch and is working for wages.

FRANK KREIDER, Comp. Wit.:

Kreider lost 12 head in 1904.

Kreider lost 14 head in 1905.

Keeps his horses up and feeds them in the shed. He shows they are not allowed to run at large. (V. 10, 3867.)

WM. M. EVANS, Comp. Wit.:

Had three calves in 1905 and 1906.

Had seven cows and seven horses in 1906.

He keeps the horses in the stable and corrals. Don't pasture. Feeds cows alfalfa.

Two cows slunk their calves in the winter of 1904 and 1905. States his cattle look bad. Horses got sore noses when pastured. (V. 11, 4250.)

Evans states he had two horses on his place in April, 1903 that belonged to his father. (Morgan Evans.) Both horses died since that time—one died in the winter of 1904-5 and the other one a few days ago or in 1906. (V. 11, 3961.)

MORGAN EVANS, Comp. Wit.:

Washoe Smelter turned his ranch into a graveyard in 1902. (V. 11, 3982.)

Lost three horses in 1904. (V. 11, 3985.)

Lost three horses in 1905.

Lost twelve horses in 1903 and 25 cattle.

In 1904 lost a lot of calves; 10 cows slunk their calves in six weeks.

Lost three or four cattle in 1905. Lost one horse in 1906, two or three weeks ago. (V. 11, 3986.)

Evans had 40 to 45 cow sand got twenty calves.

States he should have had 35 to 40 so we count 15 slunk calves in 1905.

FRANK CALLEN, Comp. Wit.:

In 1902 had 126 head of stock. Their condition, prior to

1902 all right. They began to get sick in May, 1902. (V. 11, 4025.)

Cows slung their calves, and what came were puny. *All the cattle I had in 1902 are dead except one.* (V. 11, 4026.)

All had died except fifty-seven up to the Fall of 1902. I sent fifty-seven to Smith's ranch to winter in the winters of 1902-3. (V. 11, 4027-8.)

I got thirty-one back from Smith in the Fall of 1902, and wintered them near Deer Lodge in the winter of 1902 and 1903. They kept dying the summer of 1903 on my place. Wintered them at Jerry Ryan's. The last one alive I gave away in 1905. (V. 11, 4027-8.)

Horses had sore noses and gave out on the road. In 1902 I had twenty-seven horses. *They are all dead up to this time except one.* (V. 11, 4030.)

I was stoped selling milk by the State Veterinarian in July 28, 1902. (V. 11, 4031.)

I bought two mares in 1904 and bred one to a thoroughbred horse in Anaconda. I sent it to the ranch in October. It was only there two weeks when its nose became sore. I took it away from there and sent it to the lower Deer Lodge Valley to Jim Bennett's place. I lost the colt. (V. 11, 4033.)

Place abandoned. (V. 11, 4034.)

Very seldom lost cattle or horses prior to 1902. Cannot use the ranch on account of the smoke. (V. 11, 4036.)

Defendants paid Callen \$7,000.00 damages in 1902. (V. 11, 4044.)

We give Callen's 1902 losses here to show the complete destruction in the Mill Creek regions in 1902. (V. 11, 4044.)

The Callen stock, *bought by Defendant Co., was new*

stock belonging to Dennis Callen and kept on this ranch, and we see the same result to this stock in the Spring of 1905.

JERRY RYAN, Comp. Wit.:

In 1905 I got four calves from VB cows. The calves are scrawny. (V. 11, 4049.)

I had in 1902 one hundred and sixty-five head of cattle and horses; fourteen or fifteen were horses. (V. 11, 4050-2.)

Lots of the cattle died; cows slung their calves. From the 105 cattle I had left in June of 1903 I only saw three calves. (V. 11, 4053.)

Ryan lost forty head of cattle and horses from August 1st, 1902 to May 31, 1903. (V. 11, 4055.)

Had 65 slunk calves. I sold all the stock I had. I had none to lose in 1904 except two or three milch cows. (V. 11, 4057.)

Ryan lost 400 sheep and lambs between January v, 1905, and February 27, 1906. (V. 11, 4124.)

On Rebuttal on page 21547, V. 54, states that out of 182 lambs born prior to April 21, 1906, he lost 112 on this last date removed his sheep from the Valley.

Lost five slunk calves; six died. Out of 15 cows five lived. Bred 9 mares and got one colt. (V. 54, 21551.)

Ryan had 18 horses and lost three between April 15, 1906, and January, 1907.

JOS. SILVER—Wm. Parrott Ranch, Comp. Wit.:

65 cattle, 4 horses.

5 cows dead.

4 aborted calves Parrotts.

5 aborted calves from effect of Parrott Ranch.

4 cattle died at home place; our horses died.

Was on this ranch 50 days in the Fall and Winter of 1904 and 1905.

Parrott allows no stock to pasture. (4140.) No losses except one horse in 1904.

H. HOFFMAN, Comp. Wit.:

Hoffman ranges his horses out of the smoke zone. (4149.) Sold cattle for \$14.00 and \$15.00 a head that cost as high as \$55.00 (4169.) Highest price received for any was \$25.00 ahead; out of the cattle business in the Spring of 1905.

Hoffman (4173) had one slunk calf in 1906.

Lost a horse by smoke. (4150.)

Lost two cattle since 1904 (4148.)

THOS. ELLIOTT, Comp, Wit.:

Cattle and horses didn't breed well. (V. 11, 4333.)

I lost between 50 and 75 cattle since September 1, 1903, (V. 12, 4398.)

Lost two horses in 1905. (V. 12, 4398.)

No track of horses I lost in 1904. (V. 12, 4400.)

Eli Dezourdi, Comp. Wit., (3059, V. 8,) four cows died. *He sold 133 head at \$15.00 a head in April. The loss in shrinkage is ten times the loss by actual death. Cattle had to be moved away from smoke to save them. Lost (3061, V. 8, two-thirds of the calves.*

John Bielenberg's property not in the Smoke Zone and he keeps no stock on the affected pastures, on the west side, as stock got sick there and were moved away.

J. W. MITCHELL, Comp. Wit.:

Lost three horses and four head of horned stock. New stock (4195. V. 11, 4196.) (V. 11, 4195.)

Mitchell's testimony shows that he has five head on the ranch at the present time. (V. 11, 4222.)

Sold what stock he had in the Summer of 1905 except two cows. (V. 11, 4183.)

N. J. BIELLENBERG, Comp. Wit.:

Prior to the Washoe works, kept from 1200 to 1500 cattle, and as will be seen from Bielenberg's testimony, *the majority of these cattle were breeding stock.* (V. 12, 4413.)

On page 4412, Bielenberg states on March 1, 1906, he had 660 to 675 cattle, *which were mostly steers.* Between March 1st and April 1st of 1906 he reduced this herd, (by sale and slaughter) to (21518, V. 54,) about 400 head.

States on page 4413, V. 12, the cattle I have on the ranch, March 1, 1906, *I have bought in the last three months, except 30 or 40 head.*

(NOTE—Bielenberg's testimony shows that *he keeps very few stock on the ranch continuously at the present time, but is simply buying and selling and holding cattle there temporarily, and the losses among this class of stock would necessarily be much less than among stock that is kept continuously in the Valley, or a breeding herd.*)

On page 4675, V. 12, Bielenberg states that he had 700 head of cattle in the Big Hole this winter, 1905, and 1906, also in the winter of 1904 and 1905 and did not lose a single head.

The class of stock Bielenberg had in the Big Hole, as shown by his testimony, were principally steers, and his testimony also shows *that the stock he has in the Deer Lodge Valley at the present time are also principally steers.*

The Defendants Counsel in making up their stock losses for the Deer Lodge Valley *have not included any aborted calves or colts, which is one of the most serious causes of damage to the live stock industry of the Deer Lodge Valley.*

Bielenberg's stock losses from the Fall of 1902 until October of 1903 or for a period of about twelve months show as follows:

On pages 4669, 4708, and 4478, shows a cattle loss of 106 head. Aborted calves 300; total 406 cattle. On page 4713 lost nine head of grown horses between the Fall of 1902 and February 14, 1903. Loss in 1904, 4419, 23 cattle and short 30 cattle which were afterwards found dead, but not found in 1904.

Seventy-five slunk calves; loss in cattle, which we found 23; loss in cattle not found in 1904, but afterwards found dead, thirty. Total fifty-three, or a loss of 9% of these cattle, besides the 75 premature calves. (V. 12, 4420.)

Horse loss about normal in 1904.

Loss in 1905.

Five horses. 40% of the mares aborted their colts; 13 grown cattle died; estimated shortage on aborted calves 235 head. (V. 12, 4420.)

Bielenberg states on 4459, V. 12, his calf crop in 1905 was almost a total loss. He got only 58 calves from 388 cows.

On 4434 Bielenberg states he has quit breeding cattle.)

1906 LOSSES: (V. 54, 21499.)

Ten horses and two colts.

Twelve cattle died. Counted these and he lost a lot

more that he had in the pastures and did not get. (V. 54, 21521.)

Bielenberg's stock losse for the following years, includinga borted calves and colts, estimates made on the number of calves he should have received in 1905 shows as follows:

Fall of 1902 to fall of 1903, 415 head; in 1904, 132 head; 1905, 252 head.

On page 21521, V. 54, Bielenberg states 40% of the mares in the Fall of 1905 slunk their colts. These are not included in the 1905 estimate. In 1906 states he counted 24 head, but had lost a lot more.

(NOTE—*Bielenberg gives no loss of calves in 1906 for the reason that he had stopped breeding in 1905.*

(NOTE—The amount of cattle kept on this ranch has been decreasing steadily from the present time, as shown by Bielenberg's testimony. Prior to the works he kept from 1200 to 1500 head of cattle on this ranch and on page 21518, V. 54, or in April had only 337 head which are still on feed, and states on page 21517, V. 54, "these cattle I have now, or the 337 head, I bought in January, February and March of 1907.)

He also states on page 4413, V. 12, "The cattle I have on the ranch at this time, *March 1, 1906, I bought in the last three months, except thirty head or forty head.*"

This statement of Bielenberg's shows he keeps very few stock *on the ranch continuously* and as the Record will show Mr. Bielenberg is in the butcher business in Butte and these cattle are are only held at his ranch temporarily, and bought and taken there for the purpose of eating the hay produced upon the ranch and for immediate slaughter.

On page 4416, Bielenberg states most of his horses were affected, that is, all that *were caught and examined*.

On page 4418, V. 12, states he buys cattle *late in the Fall* in order to feed his hay *so that he would not have to turn them out on pasture*.

On page 4420, V. 12, states in 1904 seventy-five premature calves came in the winter. He further states he had more than that which he did not see.

On page 4420, V. 12, he *states he saw 100 of the slunk calves of 1905 and five premature colts*.

On 4420, V. 12, he states the cattle were fed all the hay they could eat; that they lay on it and that is the reason the loss is not so great.

I hardly let any of the cattle eat any of the grass in the fields. (V. 12, 4421.)

(NOTE—The above statement shows Bielenberg uses extra caution in order to protect his stock for the last two or three years.)

Another great source of loss to the stock raiser of the Deer Lodge Valley *is the stunted condition of the cattle that do live and the less price received for cattle from the Deer Lodge Valley as compared to other valleys in Montana*.

As to the breeding of mares, Bielenberg states on page 4435, V. 12, *mares get so they won't breed at all, I think,*

I bred 14 mares last year myself in the corral and only got four colts. (V. 12, 4435.)

In order for the Court to see that this witness knows the condition in Montana, we refer to his testimony on page 4432, where he states he *has handled cattle in Montana for forty years* and states he has sold cattle in Chi-

cago, Seattle, Portland, Alaska, Butte and Anaconda, and his testimony shows that the handling of stock in different parts of Montana has been his principal business for the last forty years.

Bielenberg and Conrad Kohrs are the only two men who appeared as witnesses in this case, either for Complainant or Defendants, who have handled cattle and horses in large numbers in the State of Montana. As shown by Mr. Bielenberg's testimony, he has been in the butcher business at Butte City for over 25 years, buying cattle from all parts of Montana, and he must be acquainted with the prices of stock in the different Valleys of Montana.

Mr. Bielenberg states on page 4667, V. 12, he sold his fat cows from the Deer Lodge Valley for \$18.00 to \$20.00, while *the same class of cows* from outside valleys brought from \$25.00 to \$26.00 a head. Here we see a price for the same class of cattle which shows that the farmer of the Deer Lodge Valley has to sell his cattle, *of the same class, for 30% less than the farmers in other valleys in Montana.*

This damage, itself, is sufficient to obliterate the live stock industry in the Deer Lodge Valley.

Mr. Bielenberg's testimony in regard to the prices paid for Deer Lodge Valley stock as compared to outside stock is confirmed by *William Montgomery, Defendants Witness.*

Bielenberg on 4436, V. 12, states a calf can suck a cow for six months and the calf would be poor. Cattle grow but don't make flesh. *In July and August cattle are in a fair shape* in the Deer Lodge Valley.

(NOTE—Time of Judge Hunt's visit.)

(NOTE—This statement applies to the vicinity of Bielenberg's ranch. He states on this same page, "I don't breed any more." "I had a few calves but I killed them.")

On 4457, V. 12, he states Deer Lodge Valley calves do not fetch in the market as much as calves from other Valleys.

On 4461, V. 12, he states, "while the smelter was shut down in 1903 conditions in the Valley were all right and the people were happy.

On page 21500, V. 54, states he *lost 20 or 25 calves in 1906*. I didn't keep a record but there was probably that many. *Found cattle in his pasture dead*, but did not put them down because I could not tell my brand. The maggots had eaten them up.

States on page 21501, V. 54, *that cattle and horses have the same symptoms as they had in 1902*.

On 21518, V. 54, *he states he lost more cattle between April 17, 1906, and January 15, 1907, than he has given in the Record*.

States that these cattle had died in the pasture, which were eaten up with maggots, that he didn't count. He could not swear positively whether they were his or not but state, "*I do know no one else had cattle in there.*"

On 4672, V. 12, he states *a man should not lose any cattle at all feeding them all the hay they can eat*.

This testimony of Bielenberg's as to the loss of cattle while feeding hay, is confirmed *by his experience in the Big Hole Valley where he fed 700 head in the winter of 1905 and 1906*. *He lost none*; he had about the same

amount of *cattle in the winter of 1904 and 1905 and lost none.*

W. C. STATON'S STOCK LOSSES.

First we will give you the actual deaths of 'cattle and horses that died, and afterwards we will give the results of breeding and abortions on this ranch.

The only period in which Staton's stock did well upon his ranch since the operation of the Washoe Smelter was from October of 1903 to June of 1904. (5995, V. 15.)

On page 6363, V. 16, in October of 1904 put horses upon feed.

Horses began to get sore noses in the fall of 1904. (V. 16, 6367.)

All horses on his place in the fall of 1904 were sick. (V. 16, 6377.)

First cow died in October of 1904. (V. 16, 6012.)

Between October, 1904, and October 25, 1905, fifty-one cattle died. (V. 16, 5979.)

(NOTE—Sold all but 22 cattle October 19, 1905.)

Lost 13 horses by smoke and three from other causes, between October of 1904 and March, 1906. (V. 16, 6075.)

Staton lost of horses from smoke over thirty-three and one-third per cent, no aborted colts counted.

BREEDING AND ABORTIONS:

In the Fall of 1903 Staton bought 85 cows which had never been in the Valley prior to that time. *In the Fall of 1904 weaned 75 head of calves; 90% calf crop in 1904.* These were new stock bought in Fall of 1903 and bred out of D. L. Valley. See results from this same herd in 1905, when bred in Deer Lodge Valley.

In 1905, 47 calves in this same bunch of cows or 53% calf crop in 1905.

On 6012, V. 16, Staton's testimony shows *this herd of cattle decreased 14 head wring one year or a total loss of all increase, and 14 head less than he started with in the Fall of 1904.*

In the fall of 1904 had 168 head.

In the Fall of 1905 had 154 head.

(NOTE—And none sold.)

He should have had in the Fall of 1905, under normal conditions 238 head. Eighty-four head estimated, includes loss by abortions, deaths, and failure to breed, or a 50% loss in one year, but Defendants divide this loss into two years, 1904-5, when the actual period of loss was about twelve months or one year.

Bred 18 mares in 1904 and got six colts, born alive; one of the six died inside of 36 hours, which shows he only got about 25% of live colts. (V. 16, 6362.)

States on 6363, V. 16, he believes more than six mares were in foal. Believes the colts were slunk.

On 6374, V. 16, states he bred 122 mares in the Deer Lodge Valley in 1904 and got 42 colts or 30%. Normal colt crop should have been 80%.

McCartney's count on March, 1906, gives Staton 20 head of horses and 16 cattle.

On 21408, V. 54, Staton gives his horse loss of April, 1906, to January 15, 1907, four horses that actually died, 2 aborted colts, one that was slaughtered for autopsy, practically dead when killed, or a loss of 7 head of horses out of 21 head.

Staton's testimony shows that *only six* of these horses that he had at that time were allowed to pasture, and *three out of this six died inside of four months from the time that they were turned out*. Out of the remainder he lost one, or one out of the horses he was keeping up in the barn.

States people wanted more for their stock, when he attempted to buy, than he could buy for at other places. (V. 27, 10693.)

Cross-Examination.

Did not offer to buy any cattle from any one; only offered to buy horses from two men in the entire Valley, Watson and Scott Peck. (V. 27, 10730.)

(NOTE— this shows he was in the Valley at Defendants' request, and not to buy stock, as he stated on Direct Examination.)

McCarthy states bunch grass is not much good for stoevk. (V. 27, 10698.)

(NOTE—What does the Court think of this statement? Every one in the western country knows this *is not true.*)

He states, "Stock wont touch it as long as they can get other grasses, and only after all other grasses are covered with snow will they eat it."

This witness says he has lived in Montana since 1888, and a man who will testify as above is, saying the very least, a man who does not know stock-feeding conditions in Montana.

He admits he never counted the stock in any other Valley that he was in, and states he made this count at the

request of Mr. Brown of Great Falls, and Mr. Bowman of Anaconda. (V. 27, 10700-08.)

(Bowman is President of the Company Bank in Anaconda, had only recently come from the Company Bank in Great Falls.)

Admits Bowman stated, "Perhaps you can *do us* some good," by "US," meaning the Defendants, showing Bowman as against the Farmers in this suit.

Admits they have had the same trouble at Great Falls as the Farmers of the Deer Lodge Valley are *supposed* to have had. (V. 27, 10714.)

States cattle which looked in good condition were affected the same as the ones which were not. (V. 27, 10715.)

(NOTE.—Defendants' own witness says they have had the same conditions at Great Falls, or where the defendants' other large smelter is located; still the attorneys for defendants will argue, like conditions as seen in the Deer Lodge Valley never seen near any other smelting plant.)

Admits the horses of the Deer Lodge Valley had sore noses when he made his trip. (V. 27, 10715.)

Admits that the Hiram Staffanson bunch were affected, and by "affected," undoubtedly, means "smelter-smoke." (V. 27, 10717.)

(NOTE.—Hiram Staffanson's ranch abandoned, and he has left the Valley.)

He gives the symptoms of his cattle at Great Falls. (V. 27, 10722-23.)

(NOTE.—And they are practically the same as the cattle of the Deer Lodge Valley.)

States his cattle got well after removing them from the

pasture; some died; their hair would turn toward their head and look dead, and this condition lasted for a period of time, from two months to a year.

States some of the cattle which died were fat.

(NOTE.—Here defendants' witness disqualifies their photo exhibit, as is shown by the record; many die fat in the Deer Lodge Valley from this cause.)

“Q. Now, when you first noticed or would begin to notice symptoms, *to one just making a casual observation of these cattle, they would not notice anything wrong with them, would they, when these conditions or symptoms first begin to present themselves?*

A. *No, sir; a steer might be all right today and be sick tomorrow.*” (V. 27, 10723.)

(NOTE.—Here we see defendants' witness describing the conditions of smelter-poisoned stock at Great Falls, and they are exactly as described by the complainants' witnesses in this case: “some live and look bad a year, and others look well today and are *sick tomorrow.*”)

Admits he is not testifying as to *their inward condition*, but simply as to their condition of flesh.

(NOTE.—Dr. Formad, Chief Pathologist, Bureau of Animal Industry, and complainants' witness, testifies *one of the best looking of the fifteen experimental steers on the Bliss Ranch, and one which had only been there a short time—about ninety days—showed arsenical poisoning, showing you can't depend upon the condition of an animal as to flesh, as to whether it is poisoned or not.*)

“Q. You are not pretending to say that your description of these cattle, as to being in good condition, means that they are normal cattle, *healthy cattle?*

A. *No, sir, just the flesh.*" (V. 27, 10724.)

Admits farmers were all feeding hay to their stock. (V. 27, 10725.)

"Q. *You are not assuming to say, upon the witness stand, now, that these cattle and horses that you have inspected were not suffering from smoke? You do not assume to say they were not, nor do you assume to say they were?*

A. *Well, it looks like they have suffered from something.*"

States he can't tell what is the matter with them, as he is not a veterinarian. (V. 27, 10727.)

(NOTE.—This above answer disqualifies this witness entirely in the case as to the actual condition of the live-stock of the Deer Lodge Valley "Smoke Zone.")

Never made an offer to purchase any horses in the entire Valley. (V. 27, 10730.)

Saw dead horses and cattle in the Valley; kept no count of these nor reported them to any one. (V. 27, 10730-1.)

When McCartney is asked to name the men whose pastures for stock were exhausted he names *James Perkins*, and further admits, on pages 10753-4, Vol. 29, *that he was not investigating the pastures of the Deer Lodge Valley, as his mission was to observe the physical conditions of the stock of the Valley.*

(NOTE.—Still on direct he does not hesitate to state *the Valley is overstocked.*)

Never knew cattle, under normal conditions, but what would shed off at some season of the year. (V. 27, 10761.)

(NOTE.—This shows cattle of the Deer Lodge Valley are not normal, as they don't shed.)

States the hay of the Big Hole is inferior hay. (V. 27, 10773.)

(NOTE.—*This is disputed, not only by all witnesses outside of McCartney, but by results obtained from feeding it.*)

More beef fattened on Big Hole wild hay, for the given territory, than any place in the United States.

States how cattle could show a gain by the scales and still not make any real gain in flesh. (V. 27, 10775.)

(NOTE.—*Undoubtedly this is how Gardiner made the wonderful gains he produced on Section Sixteen.*)

Considers the Deer Lodge Valley overstocked, as all other valleys. (V. 27, 10778.)

(NOTE.—*Here McCartney shows the Deer Lodge Valley no more overstocked than other valleys in Montana, but no trouble in any other valley in Montana like in the Deer Lodge Valley.*

Dr. Knowles' testimony, pages 2107-08, states to have seen smoke-poisoned cattle and horses at Great Falls.)

Admits two hundred of his cattle were smoked at Great Falls in August, and the entire two hundred head were affected. (V. 27, 10715.)

List of all the stock counted by McCartney, Deft.'s Wit., in the entire Deer Lodge Valley between March 5, 1906, and March 25, 1906, both in and out of the smoke zone:

	Horses.	Cattle.	Sheep.
T. Parker	10	10	.....
Wm. Benninger	18	18	.....
J. Watts	28	14	.....
J. Leavengood	15	60	.....

William Harper	46	.....
William McMonigle	46	.....
Jones Place, nr. Anaconda	12	.....
George Parrott	14	16
Peter Jessen	2	60
F. Jones	3	.....
J. Furst	20	156
J. Wenger on Furst Ranch	6	.....
W. J. Evans	50	17 of which were calves.
Chas. DuBey	3	3
W. C. Staton	21	16
Peter Staton	3	4
Nels Pierson	5	84
Section 16	26	64
Scott Peck	35	6
M. Lavelle	10	11
J. and H. Watson.....	30	6
F. Kreider	6	10
Davidson, Goodman and Morgan Thomas	12	17
Milo French	6	.....
W. Parrott	5	7
Talbot	24	12
D. L. Griffith	9	3
G. Cox	35	.....
Wm. Norton	52	87 of which 77 were for. cattle.
Frank Henault	25	42
Mr. R. Danserau	50	.....

Insane Asylum .....	.....	56 Dairy Cows.
“ .....	.....	56 Stk. Cattle.
“ .....	.....	85 Beef Steers.
“ .....	.....	4 Oxen.
Wm. James	25	17
Dan Thomas	8	3
B. Para	6	11
F. Threlkeld	4	3
M. Johnson .....	.....	73 Dairy Cows.
P. Sweeney .....	.....	77 Dairy Cows.
E. D. Wolfe .....	.....	26 Dairy Cows.
Jenderson-B. Howell Reh... ..	.....	25 Dairy Cows.

McCartney counted (10650) 22 head of Jenderson cattle in the field north of Howell's Ranch. He has again counted these same cattle when he arrived at the ranch where they were kept on N. Leffring's Ranch.

	Horses.	Cattle.	Sheep.
H. Johnson .....	.....	20 Milch Cows. ....	.....
E. Strom .....	.....	3 .....	.....
C. Jergenson	7	24 .....	.....
A. Peterson	7	16 .....	.....
Hengell .....	.....	7 .....	.....
P. Peterson .....	.....	7 .....	.....
A. Copenius	5	11 .....	.....
Holtz .....	.....	5 .....	.....
J. Staffanson	7	5 .....	.....
H. Staffanson	24	50 .....	.....
Chas. Rivers .....	.....	25 .....	.....
William Stevens	11	25 .....	.....
E. and P. Staffenson .....	.....	31 .....	.....

J. Staffenson	4	10	.....
Jake Staffenson	5	.....	.....
William Staffenson	7	5	.....
Deslaurier	10	41	.....
E. C. Couzens	15	22	.....
Al Walker	7	12	Dairy Cows.
Geo. Jacques	46	6	.....
Chas. Bowman	8	130	.....
George Danish	20	60	.....
Schwend Bros.	34	2	.....
Charles Jones	39	2	.....
Dave Scott Estate.....	15	5	.....
Matt Smith	15	5	.....
Nick Liffing	16	24	22 of these cat-

tle are cattle
belonging to
Jenderson and
were also
counted on
the Howell
Ranch.

Chas. Bennett	11	20	.....
Chas. Rivers	26	.....	.....

400 Mexican Steers on the Donicich Ranch.

William Roberts	8	30	.....
Cummock Bros.	12	3	.....
J. Hamlin	14	7	.....
Brownells	62	60	.....
Joe Jacobson	30	205	.....
George Johnson .....	.....	55	3780
Roseberry	12	12	.....

Abe Perkins	32	2	.....
J. Hoffman	66	40	.....
Becksted Ranch	22	.....	.....
Hugh McGowan	19	62	.....
Whitcraft	26	5	.....
Monte Strickland	12	1	.....
Dan Tuehy	6	133	.....
Mrs. Quinlan	9	50 Beef Steers.	.....
		18	
N. Bielenberg	23	150 Beef Steers.	200
		550	

LIST OF STOCK COUNTED BY McCARTNEY, DEFENDANT'S WITNESS, IN D. L. VALLEY.

	Horses.	Cattle.	Sheep.
Elliott	50	321 85 of which is Beef Steers.	
J. Perkins	4	4	.....
J. Perkins	34	74	.....
Jerry Ryan	20	19	1400
J. Bohn	12	4	.....
J. Martin	16	15	.....
H. Hoffman	10	5	.....
Coleman Ranch.....	No Stock.		
Hempstead & Boyle	31	26	2200
H. Quinlan's Ranch.....	No Stock.		
H. Hendrickson	2	40	.....
Chris Jensen	2	5	.....
Jake Eliason	4	11	.....
I. Eliason	2	2	.....
John Eliason	8	26	.....

George Eliason	100		
Nels Beck	13	11	
Chris Jensen	5	15	
Max Kraemer	7	38	
Pierson Sons	5	43	
Geo. Johnson Home Ranch	13	20	
Eli Dezourdi	70	3	2400
Pete Normander	40	275	
Kohrs & Bielenberg.....	32	1337	
Conley & McTague	20	850	
Peter Valiton		1514	
Alesworth	8	27	
P. Johnson	2	4	
J. Quinlan	5	37	
Dan Golding	11	50	
D. Johnson	3	8	
W. Beck.....	7	25	
Henry Meagher.....	21	21	1800
Mrs. Snell	11	11	
Page 1 (529).....	348	848	
Page 2 (559).....	145	772	
Page 3 (560).....	615	1562	3980
Page 4 (561).....	468	4941	7800
Totals	1576	8123	11780

We now take McCartney's, defendant's witness, count of all the stock he found *on all* the ranches of the Farmers' Association, and see what we find. We will first give the total of all stock, *whether owned there, or there temporarily, and afterwards deduct the transient stock.*

Head.

Total of all stock found by McCartney, defendant's witness, on all the ranches of the Farmers' Association	4615
Deducting 1065 for the following reasons.....	1065
	<hr/>
	3550

- 400 Mexican Steers, Transient.
- 205 Jacobson Transient Cattle.
- 73 Johnson Transient Cattle.
- 77 Sweeney Transient Cattle.
- 26 Bliss Ranch.
- 50 Quinlan Rock Creek Steers.
- 50 Cows, French Gulch Cattle.
- 77 Norton Transient Cattle.
- 60 Wenger Beef.
- 47 Jenderson Transient Cattle.

1065

None of the 1065 belongs to members of the Farmers' Association. After making the deduction we find we have 3550 horses and cattle on all the ranches of the Farmers' Association, which consists of 107 members, while the record shows that the 33 members of the Farmers' Association who testified on direct for the complainant shows they owned in 1902 4642 cattle and horses, or more on thirty-three ranches in 1902 than McCartney found on all the ranches of all the Association in 1906. And the record shows that 33 men in the year 1902 owned and kept in the Valley nineteen hundred and two head more stock than is owned by the entire Farmers' Association in 1906. And in

this estimate we include Bielenberg's stock, 510 head, which are only there temporarily.

The total number of horses and cattle as counted by defendants' witness, McCartney, in the entire "Smoke Zone" of the Deer Lodge Valley as described by townships heretofore mentioned in the evidence of complainants' witness, W. C. Staton, as comprising the "Smoke Zone."

These horses are mostly work horses, and there are 662 cattle owned by men who are exclusively in the dairy business. There are 370 Beef Steers which the record shows have recently been brought to the Valley, and there are 332 foreign cattle, as the record shows.

The record further shows that five men owning 232 head of horses and cattle abandoned their homes and left the Deer Lodge Valley very shortly after Mr. McCartney's count, leaving, as what might be properly classed Deer Lodge Valley cattle and horses, 2934 head in the entire smoke zone of the Deer Lodge Valley, or less horses and cattle than were kept upon the ranches of N. J. Bielenberg, Thomas Elliott and the Quinlan's immediately prior to the operation of the Washoe Smelter.

STOCK IN 1902-1906.

The following is the list of complainant's witnesses who testified to the amount of stock they had upon their ranches in the year 1902, and in most all cases the amount of stock arrived at is taken from the releases from the different parties to defendant Companies, and introduced by the defense, and showing the amount of stock they paid damages upon in 1902, or under the short stack :

(All in Volume 27.)

ANGUS SMITH—My herd was entirely disposed of in April, 1903—91 head. (676.)

K. D. SMITH—Horses and cattle, 121. (855.)

E. D. WOLF—5 horses and 1 cow. (935.)

THRELKELD—65 cattle and 6 horses—71. (991.)

HOWELLS, B.—31 cattle, 8 horses—39. (1043.)

PARA—77 cattle and 9 horses—86. (1106.)

L. J. HENSLEY—3 horses—3. (1178.)

G. C. CUMMOCK—24 cattle and 16 horses—40. (2584.)

S. AYOTTE—3 horses—3. (2634.)

QUINLAN RANCH, H. J. QUINLAN and MRS. H. J.—350 cattle and 50 horses—400. (2645.)

GEO. JACQUES—72 cattle and 32 horses—104. (2823.)

NOTESTINE—22 horses and 25 cattle—47. (2889.)

E. STAFFENSON—41 cattle and 26 horses—67. (2958.)

C. B. JONES—32 horses and 12 cattle—44. (3049.)

E. Desourdi—141 cattle and 66 horses—207. (3080.)

GEO. PARROTT—105 horses and 88 cattle—193. (3205.)

W. F. STEVENS—41 cattle and 15 horses—56. (3261.)

LEFFERING—65 cattle and 22 horses—87. (3335.)

GRIFFETH—1500 sheep, 8 horses and 3 cows—1511. (3363.)

W. P. ROBERTS—45 cattle and 10 horses—55. (3450.)

WM. EVANS—76 cattle and 32 horses—108. (3519.)

SCHWEND BROS.—50 horses and 15 cattle—65.
(3569.)

JOHN QUINLAN—189 cattle and 25 horses—214.
(3618.)

JOHN BOHN—20 cattle and 5 horses—25. (3704.)

JOHN MARTIN—67 cattle and 12 horses—79. (3765.)

W. H. ALLEN—5 cattle and 5 horses in 1902, none in
1905-06—10. (

KREIDER—63 cattle and 14 horses—77. (3894.)

MORGAN EVENS—134 cattle and 37 horses—171.
(4010.)

F. CALLEN—100 cattle and 25 horses—125. (4044.)

J. RYAN—165 cattle and 14 horses—179. (4120.)

HENRY HOFFMAN—38 cattle and 10 horses—48.
(4178.)

JOHN W. MITCHELL—6 cattle and 4 horses—10.
(4239.)

THOMAS ELLIOTT and ELIZA C. ELLIOTT—518
cattle and 66 horses—584. (4322.)

N. J. BIELENBERG—100 horses, 1200 to 1500 cattle
prior to 1902—1450. (4414.)

(NOTE.—No settlement made with Bielenberg.)

W. C. STATON—70 horses and 130 cattle—200. (6313.)

PETER STATON—In 1902, 80. (21371.)

SORN R. BECK—673 sheep—673. (2987.)

Total Horses and Cattle, 5156.

Total Sheep, 2173.

Thirty-seven men who testified, who awarded stock in 1902, give the number at that time owned by them as 5056 cattle and horses and 2173 sheep.

The defendants claim no decrease in the amount of stock in the Deer Lodge Valley in 1906 as compared to 1902. In the following tables we will give the number of stock counted by defendant's witness, McCartney, upon the ranches of *the men who testified for complainant in this case on direct.*

In the same table we will also give the amounts of stock owned by these men in 1902.

Where a tenant is on the ranch of one of the Farmers' Association we give the number of stock on the ranch, as in the case of A. Smith, K. D. Smith, B. Howells and the Bliss Ranch:

	Amt. of stk. on these ranches in 1902.	No. as counted by McCartney.	
Angus Smith, Dairy.....	91	73	Dairy cows Johnson.
K. D. Smith, Dairy.....	121	77	Dairy cows
E. D. Wolf, D. James, 1902, Bliss Ranch.....	48	26	Wolf's cs. '06
F. Threlkeld	71	7	
Howells, Dairy	39	25	J'd'son's D'y Dairy cows
Para, Dairy	86	17	
L. J. Hensley.....	3	0	
G. C. Cummock.....	40	14	
Ayotte	3	0	
Mrs. Quinlan	400	77	50 R.C. strs
G. Jacques	104	52	

B. F. Notestine.....	47	17
E. Staffanson	67	31
Chas. B. Jones.....	44	50
Eli Desourdi	207	33
George Parrott	193	30
W. S. Stevens.....	56	56
N. Leffering	87	40
D. Griffeth	1500	
D. Griffeth	11	12
W. P. Roberts.....	55	38
Wm. Evens	108	50
Schwend Bros.	65	36
J. Quinlan	214	42
J. Bohn	25	16
J. Martin	79	31
W. H. Allen.....	10	0
Kreider	77	18
Morgan Evens	171 not c'n't'd by	
	McCartney	100 Mc. (4001)
Frank Callin	125	.....
Jerry Ryan	179 1400 sheep	39
Henry Hoffman	48	15
J. W. Mitchell.....	10	——
Thos. & Eliza Elliott....	584	371
N. J. Bielenberg.....	1350	573
W. C. Staton.....	200	37
Peter Staton	83	7
	—————
	5021	2048

 Decrease on 36 ranches, 2973.

Mr. Ryan states on rebuttal that he was compelled to move these sheep entirely from the Deer Lodge Valley, and at the close of the case there was not any sheep kept within the Smoke Zone of the Deer Lodge Valley.

The thirty-six men who testified for complainants on direct, whose stock were counted by McCartney, the evidence shows they owned and kept 5021 stock on these 36 ranches in 1902, or immediately prior to that time. In the count made by McCartney there is 2048 stock counted on these ranches, *233 dairy cows belonging to the tenants on the A. Smith, K. D. Smith, Bliss & Howell ranches, and fifty cattle of Wm. Evens, which is not kept in the Valley; also fifty beef steers belonging to Mrs. Quinlan, or a total of 333 head that must be deducted from the Valley cattle, leaving 1715 cattle and horses owned by these thirty-six men as against 5021 in 1902.* Bielenberg states prior to 1902, or five or six years ago, he kept 1200 to 1500 cattle on his ranch, *and at the time he testified in March of 1906 all the cattle he had on the ranch he had bought inside of four months,* and McCartney, who counted the cattle on this ranch, states there was a sale of over 100 head the day he was there, but this 100 head is included in the 550 he counted, *so we can exclude 570 cattle on Bielenberg's ranch as transient cattle, not being Valley cattle, which leaves 1165 head of stock of all kinds on these 36 ranches in 1906, that are kept continuously in the Valley, while in 1902 there was kept and owned by these 36 men 5021 head, a decrease in stock of over 75 per cent.*

The sheep record shows only three bands of sheep in the Smoke Zone: Griffith, 1500 in 1902; Ryan, 1400 in 1905-6; Becks in 1904.

Griffeth quit the business in 1902. Ryan bought and went into business in 1904; kept them two years. He lost large numbers by death, and was compelled to remove from Valley in 1907, showing sheep cannot be kept in the Smoke Zone for any length of time. Sorn R. Beck, in April of 1904, was compelled to take his sheep out of the Smoke Zone, after being there about ten days. He lost 27 per cent inside of six weeks. (V. 8, 2982-83-85-87-93.)

Dr. Knowles swears positively these sheep died of arsenical poisoning (V. 6, 2233.) So we see a total destruction of the sheep industry in the Deer Lodge Valley.

N. J. Bielenberg states he lost 1500 sheep in the years 1902-3-4. (V. 12, 4816.)

McCartney, Deft. Wit., laid over from March 9th to 19th on account of stormy weather. Same time Staton was counting cattle.

The amount of stock counted by E. McCartney, Deft. Wit., *upon the farms of the Farmers' Association and belonging to the men who testified showing the different kinds of stock.* This count was made in March, 1906.

	Cattle.		Milch		Work		Range	
	Calves.	Cows.	Horses.	Sheep.	Horses.	Steers		
Geo., Parrot	6	7	7	.....	7	.....	
W. J. Evans	17	.....	.....	.....	.....	.....
(Cattle are kept in French Gulch)								
W. C. Staton .....	.....	21	.....	.....	.....	.....
P. Staton .....	.....	3	.....	.....	.....	.....
F. Kreider .....	.....	8	.....	.....	.....	.....
Notestine .....	.....	.....	.....	.....	.....	.....
Wm. Parrott	2	5	5	.....	.....	.....
D. L. Griffith .....	.....	3	9	.....	.....	.....
B. Para	25	11	6	.....	.....	.....
Threlkeld .....	.....	3	4	.....	.....	.....
Wolf .....	.....	26	.....	.....	.....	.....
Wm. Stephens .....	.....	15	11	.....	.....	.....
Staffenson, E. and P. ....	.....	.....	.....	.....	.....	.....
Staffenson .....	.....	10	4	.....	.....	.....
Staffenson, Wm. (Rebutal) ..	.....	5	7	.....	.....	.....
Jacques .....	.....	6	.....	.....	.....	46
Schwend Bros. ....	.....	.....	.....	.....	.....	34
C. Jones .....	.....	2	.....	.....	.....	39
Laffering-Jendersons	—	24	16	.....	.....	.....

Roberts	30	8	.....	.....	.....	.....
Cummock	2	12	.....	.....	.....	.....
Jacobson (Rebuttal)		15	.....	.....	15	.....
A. Perkins (Rebuttal)	2	7	.....	.....	25	.....
Mrs. Quinlan (Rock Creek steers) .....	.....	.....	.....	.....	.....	50
Mrs. Quinlan .....	.....	9	.....	.....	.....	.....
Bielenberg .....	.....	23	.....	200	.....	150
Elliott (10672) .....	.....	.....	.....	.....	50	85
Ryan .....	.....	10	.....	1400	10	.....
Bohn	4	6	.....	.....	6	.....
Martin	5	6	.....	.....	10	.....
Hoffman (cows and calves)	5	10	.....	.....	.....	.....
Quinlan (no stock) .....	.....	.....	.....	.....	.....	.....
	<hr/>	<hr/>		<hr/>	<hr/>	<hr/>
Deduct (transient on Jacobson's ranch)	150	199	.....	1600	242	235
	<hr/>	<hr/>		<hr/>	<hr/>	<hr/>
Calves						
	<hr/>	<hr/>		<hr/>	<hr/>	<hr/>
Total stock cattle on all the ranches of the Farmers' Association, who testified.....	25	990	.....	.....	.....	710
		205	.....	.....	.....	.....
		<hr/>		<hr/>	<hr/>	<hr/>
		685	.....	.....	.....	.....
		25	.....	.....	.....	.....
	<hr/>	<hr/>		<hr/>	<hr/>	<hr/>

Total stock cattle on all the ranches of the

Farmers' Association, who testified.....710

We find on taking McCartney's count for the stock on the ranches of the men belonging to the Farmers' Association, who testified in the case, *there are 31 men who own stock in the Valley who testified.* These 31 have horses and cattle to the number of 1899. *Bielenberg and Elliott have 854 head of stock—almost as many as the other 29 men.*

Bielenberg's testimony shows the stock he has, he has only recently bought and they are only kept there for a short time. In this 1899 head are included 205 head on Jacobson's ranch which are being fed there temporarily, so we take the 550 on Bielenberg's place and add the 205 on Jacobson's place, which equals 755 head. Deduct this 755 head as transient stock and we *have only 1144 head of stock that can be called Deer Lodge Valley cattle and horses.*

The losses of stock that is only held in the valley for short periods would necessarily be small, as they are only held there to feed hay to, and are removed or sold and not allowed to pasture to any extent. In figuring these cattle in the per cent of loss is unfair to the complainant as all the testimony in this record shows.

Stock in the valley, as a general thing, do not die until exposed to these conditions for some length of time. Take the year 1902—in which year the death and sickness among the stock is acknowledged by the defendants to have been caused by the smelter fumes, and what do we see?

First. The smelter started in the spring of 1902, or about March 1st. The first deaths caused in the valley was among the Callan herd along in July, or about 3 1-2 months before deaths began to occur. Then along in Sep-

tember, or five months after, stock began to die in the Warm Springs and the upper end of the valley near Section 16, or where the company farm now is, and later in the fall and winter in the region of Nick Bielenberg's ranch. *Taking new stock from three to six months after being exposed to the smelter fumes before deaths began to occur, and what was true in 1902 is true now. Stock do not begin to die, as a rule, until they have been exposed to these smelter fumes for a period of some months, so that in including as valley cattle or horses those that are brought in and fed hay and then taken out in a short time is entirely unfair and unjust to the complainant.*

These 31 men who testified in direct on complainant's case had only 1144 head of stock that had been there for any length of time. Perkins, Jacobson and Staffenson, three of the 31, were only called on rebuttal and any stock losses they might have had in 1903-4-5 was under the rulings made by the Master, excluded, so we have the losses testified to by 28 men on direct, and the losses of the remainder of the 107 farmers or to the number of 79, do not appear on this record. Still defendants assume in their general summing up of losses that all losses that have occurred in the valley among stock are given in the record.

The only fair way to compute these losses is to take the actual number of stock that is kept in the valley continuously, or stock owned and kept there for ranch purposes, and take the losses occurring among this class of stock and we then get an approximate idea of the per cent of the death loss. But this cannot be done and give the complainant justice in this case, for the reason that stock are not kept in the Deer Lodge Valley at this time or since

the smoke under the same conditions as exist in any other valley in Montana. In other valleys of Montana stock cattle and horses are allowed to pasture and run on the ranges for at least nine months in the year and are fed little or no hay, while in the Deer Lodge Valley, in some localities, cattle are not allowed to pasture at all, and in other parts not to exceed five months.

The defendants' own experimental stock was fed (in the case of the Staton cattle) for 7 1-2 months, *showing that the defendants themselves did not allow their stock to have the average stock conditions of Montana.* The testimony of every witness for the complainant shows that they feed from two to three times the hay per head they did prior to the smoke period, and still, under these conditions, they lose stock, cows and mares abort and won't breed.

Let us look at the condition of the stock business in the valley at the present, in the year 1904-5, as testified to by the following witnesses, and see what it shows.

Geo. Parrott in 1904 had about 65 *cattle and 15 horses. He could not keep his cattle on the west side of the Deer Lodge Valley, but took them to the east side, over the mountain, out of the smoke. Died when brought to the ranch; cows aborted, so castrated his bull; quit breeding and sold his stock. Has March, 1906, ten cows, six calves and fourteen horses.*

Shows this man's stock business is destroyed; while prior to any smoke he kept 150 horses, and about the same amount of cattle, which he kept on the west side of the valley on the Mill and Willow Creek range.

W. J. Evans, since 1902, has kept no horses or cattle in the valley, but takes them to French Gulch, 22 miles, and

only brings them back during the feeding period, and does not allow them to pasture. He had over 200 head prior to 1902 of cattle and horses. He has now about 50 cattle.

W. C. Staton had in 1904, 200 head. He now has 37 head. Sold cattle and horses in the fall of 1905, since then does not allow stock to pasture. *He turned six head on pasture as an experiment in September, 1906, of which three died, one killed, ready to die, or lost four of the six in five months,* and Staton's testimony shows these horses had the range of his entire ranch of over 3000 acres. He is out of the stock business.

Peter Staton, Comp. Wit., only three horses, three cows, on his ranch. Shipped 75 or 80 head of cattle to Milk River to keep them from dying in 1902. In January of 1907 had one heifer left and four horses, *lost three head of horses out of the seven he had on the ranch in 1906, and the only cow he had.*

This man is out of the stock business.

F. Kreider, Comp. Wit., had 65 or 70 head of cattle and eight horses in 1904. He now has 10 cows and eight horses. A great many died and he sold the remainder. Don't allow stock to pasture but feeds in the barns and corrals.

Made prior to 1902, \$1500 a year profit. Now he is out of pocket.

(NOTE—Out of the stock business.)

Notestine has 17 cattle and a few work horses at the present time. Had larger number prior to 1902.

(NOTE—Out of the stock business.)

D. L. Griffeth, three cows and nine horses. Don't pasture at all. Keeps stock up. Was in the sheep business prior to 1902. *Sold out in 1902 and quit the sheep business.*

Wm. Parrott, 5 milch cows, two calves and five horses. Don't pasture; keeps stocks up.

B. Para, 11 cattle and six horses in March. Keeps in barns and corrals and feeds only. Only pastures cattle on the east side of the Deer Lodge Valley. Don't pasture on the ranch.

F. Threlkeld, no stock to amount to anything since 1902. He has not restocked the ranch. He had over 100 head prior to 1902. He now has three cattle and four horses. Don't pasture, but feeds in barns and corrals.

One of the stock business.

And the remainder of the men who testified for complainant, and whose stock was counted by McCartney, tell practically the same story as the ones quoted, showing *the only way to keep stock alive at all in the smoke affected portion of the valley is excess feed, extra care, and not to pasture, and still with this extra care the farmers of the valley are not able to keep their stock in normal health and large numbers die.*

We now take the number of cattle and horses as shown by McCartney's count on the ranches of the men who testified in this case for complainant, and take their losses from the fall of 1904 to the time complainants closed his case, April 15, 1906.

The following table is based on the stock on the ranches named below, on whose ranches defendant's witness, McCartney, counted the stock and the numbers of stock given

by defendant's witness are the numbers taken. *We only take the names of the men who testify in the case, as there is no record of the stock loss of men who did not testify. Some of the men who testified had quit business in the valley prior to McCartney's count, and in these cases McCartney reported no stock or did not mention their names, and as to arriving at any percentage of loss accurately, it is impossible, under the conditions that exist in the Deer Lodge Valley. As every stock man or ranchman in the valley, with the possible exception of Thos. Parker and Chas. Bowman, shows that the amount of stock kept by them is steadily decreasing, and in most instances have entirely gone out of the stock business, while in the cases of Bielenberg and Elliott the amount of stock kept has decreased 50 per cent in the case of Elliott, and in the case of Bielenberg, 75 per cent of the stock kept. Bielenberg doesn't attempt to breed cattle at all.*

Take the numbers of stock found on the 29 ranches of the men who testified, and belonging to the Farmers' Association, whose stock was counted by McCartney, and what do we find? Very few to the ranch. Deduct Bielenberg's, Elliott's stock, 205 transient cattle on Jacobson's ranch and the 50 head of Wm. Evens cattle which are kept out of the valley in French Gulch.

Bielenberg	573
Elliott	371
Jacobson (transient)	205
Wm. Evens (French Gulch cattle)	50
	<hr/>
	1119

Take the 1119 head from 1899 found by McCartney on

these four ranches and we have 700 left for the other 27 ranches, or about the amount of *cattle alone* that the Quinlan ranches carried prior to 1902, or an average of 29 head to the ranch, which are mostly work horses and milch cows. Also note on page 18063, V. 46, Deft it. BcCleary, the Williams estate ranch in upper Deer Lodge Valley, kept from 300 to 400 of stock in 1902 and now has only about 30 head, and the court will see that this ranch of about 1600 acres (see Deft. Ex. No. 1, map of the valley), kept more stock than is now owned *in the entire upper valley striking a line east and west from the smelter.*

In the following table we take the count of Defendants' witness, McCartney, of the stock on these ranches, for the reason that McCartney is the only man who made a complete count of all the stock in the valley. This stock was counted along in the spring of 1906, while cattle and horses were on feed and doubtless is approximately correct. *We only give M'Cartney's count in this table on the ranches of the men who testified in this case.*

We do not claim that this table gives the correct percentage of the stock loss of these men, for very few of the witnesses gave the actual number of stock they had each year and the deaths that occurred each year, and it is impossible from the record to give *any correct percentage of stock loss for any year or even for the full length of time of this controversy*; but we submit this table simply *to show the great losses that these men have sustained since the erection of the big stack. We include abortions as loss of stock. We also give the total number of deaths and include all farm animals, excluding hogs and sheep; these*

figures refer only to horses and cattle except where it mentions sheep.

In this table where the witness is marked "rebuttal" the stock losses as *given here only apply between the periods of the closing of complainant's case on direct and the close of defendants' case on direct, or a period of about six months.* In this table we have *not given any of the losses of the men who testified on whose ranches Mr. McCartney did not count stock*; and in this table every man who testified in this case, whether on direct or rebuttal, for complainant, on which Mr. McCartney found any stock, we give his stock losses.

In the case of Nick Bielenberg and John Quinlan, in their range cattle, *we estimate in one case, Jno. Quinlan, the amount of slunk calves.* (V. 30, 11587.)

Wenger, Deft. Wit., states cows should produce eighty per cent of calves; *in estimating these slunk calves we take this eighty per cent of the calves cows should have, deduct the amount received in live calves from the estimated eighty per cent. The difference we class abortions, as lost stock. This is only done in the case of John Quinlan, and is only partially true in the case of Nick Bielenberg.* (V. 30, 11638.)

In Staton's losses we have not included abortions. Elliott's testimony of losses by abortions show large numbers.

Bielenberg states on page 21521, V. 54, *forty per cent of the mares in 1905 slunk their colts.* These are not included in the stock losses. In 1906 states he counted 24 head of aborted calves, but lost a lot more. On page 21518, V. 54, states he has lost more cattle between April 17, and

January 26th than he has given in the record.

On page 6012, V. 16, Staton's *testimony shows his herd of cattle decreased fourteen head in one year, or a total loss of all increase in the herd and fourteen head from his original number*; but the number of deaths given by Staton, *seventy-two, did not include a slunk colt or a slunk calf*. On page 6362, V. 16, Staton shows he only got 25 percent increase where he should have had 80 per cent.

Staton's testimony shows that in 1904 from cattle bred out of the D. L. Valley he got a ninety per cent calf crop, while in 1905 th same bunch of cows bred in the Deer Lodge Valley he only got a 53 per cent calf crop. These losses are not in the following table.

Wolfe states on page 955, V. 2, that he has had two slunk calves on the Bliss ranch. One calf died that was born there and he thinks one died there the day he left.

Liffering states on page 3284, V. 9., he lost a good many calves from the fall of 1902 to the spring of 1905, but gives no number. Sold his cattle in 1905. States on page 3302, V. 9, that Jenderson's cattle were losing their calves at the time this count of McCartney's was being made, but gives no amount of calf loss among the Jenderson cows.

Number of stock counted by McCarney, Deft. Wti., and stock losses of complainant's witnesses since erection of new stack, who testified in the case, whose stock was counted by McCartney:

H. J. Quinlan, no stock.

Geo. Parrott, 30 cattle and horses, page 3254-3179, V. 9; deaths and abortions since new stack up to time Complainant closed his case, 35.

W. J. Evans, 50 French Gulch cattle (V. 9, 3516, V. 10, 3961-62) ; deaths and abortions since new stack up to time Complainant closed his case, 36.

W. C. Staton, 37 cattle and horses (V. 15-16-54, 5979-6017-21424-21408-21419) ; deaths and abortions since new stack up to time Complainant closed his case, 72.

P. Staton, 6 cattle and horses (V. 54, 21369-70) ; deaths and abortions since new stack up to time Complainant closed his case, 4.

F. Kreider, 18 cattle and horses (V. 10, 3866-68-83) ; deaths and abortions since new stack up to time Complainant closed his case, 26. (Not counting slunk calves.)

Notestine, 17 cattle and horses (V. 8, 2836-2841) ; deaths and abortions since new stack up to time Complainant closed his case, 16.

Wm. Parrott, 12 cattle and horses (V. 11, 4244-46) ; deaths and abortions since new stack up to time Complainant closed his case, 19. (J. Silver's testimony. These cattle died as result of 50 days' feeding in the Deer Lodge Valley on the Wm. Parrott ranch.)

D. L. Griffeth, 12 cattle and horses ; no stock loss ; keeps horses in barn.

B. Para, 17 horses and cattle, (V. 3, 1073-1081) ; deaths and abortions since new stack up to time Complainant closed his case, 23.

Threlkeld, 7 cattle and horses, (V. 3, 980-989) ; deaths and abortions since new stack up to time Complainant closed his case, 2. (Got only two calves since 1903.)

Wolf, 26 cattle and horses (V. 3, 902-954) ; deaths and abortions since new stack up to time Complainant closed his case, 13.

Stephens, 56 cattle and horses, (V. 9, 3228-3253-3257) ; deaths and abortions since new stack up to time Complainant closed his case, 9.

E. Staffenson, 31 cattle and horses (V. 8, 2927-2954-2955-2930) ; deaths and abortions since new stack up to time Complainant closed his case, 48.

J. Staffenson, 14 cattle and horses (V. 54, 21148, rebuttal) ; deaths and abortions since new stack up to time Complainant closed his case, 10.

W. Staffenson, 12 cattle and horses (rebuttal.) Gives no count of loss of stock except on page 21741, V. 55 ; sent cattle away ; sold some horses ; some died ; has only four head left.

Jacques, 52 cattle and horses, (V. 8, 2757-2766) ; deaths and abortions since new stack up to time Complainant closed his case, 10.

Schwend Bros., 36 cattle and horses (V. 11, 4120, V. 9, 3564-65) ; deaths and abortions since new stack up to time Complainant closed his case, 12.

C. Jones, 50 cattle and horses, (V. 8, 3013-3050) ; deaths and abortions since new stack up to time Complainant closed his case, 21.

Lifferring, 40 cattle and horses. Twenty-eight out of the 40 are Jenderson cows ; no losses of cows reported, but Lifferring states (3297) his stock would all die if he let them run out ; only has 11 head of his own.

Roberts, 38 cattle and horses (V. 54, 21445, Reb. 11) ; deaths and abortions since new stack up to time Complainant closed his case, 61.

Cummock, 14 cattle and horses, (V. 7, 2578) ; deaths and

abortions since new stack up to time Complainant closed his case, 1.

Jacobson, 235 cattle and horses (V. 54, 21385) ; 205 foreign cattle. Deaths and abortions since new stack up to time Complainant closed his case, 5.

A. Perkins, 34 cattle and horses. Perkins called on rebuttal to show the uselessness of photographs of vegetation in the Deer Lodge Valley.

Mrs. Quinlan, 77 cattle and horses (V. 6, 2651-2722, Quinlan's testimony) ; 50 Rock Creek steers. Deaths and abortions since new stack up to time Complainant closed his case, 17.

J. Quinlan (V. 10, 3585-6.) Estimated loss on calves in one year, 75.

J. Quinlan (V. 8, 3589-3646-3631) ; deaths and abortions since new stack up to time Complainant closed his case, 12.

Bielenberg, 573 horses and cattle; losses 1904 (V. 12, 4419-20), 132; losses 1905 (V. 12, 4420-4459-4434), 252; losses 1906 (V. 54, 21499-21521-21500), 44.

Elliott, 371 horses and cattle (V. 12, 4435) ; deaths and abortions in 1904, 77.

J. Ryan, 39 cattle and horses (V. 9, 3199), 400 sheep in 14 months, 1905 to Feb. 1906; 1906 to Jan. 1907 (21547-21557), 125 sheep; total 525. Ryan's stock loss, horses and cattle between April 15, 1906 and Jan. 16, 1907 (V. 54, 21539), 13.

Bohn, 16 cattle and horses (V. 10, 3644) ; deaths and abortions since new stack up to time Complainant closed his case, 1.

Martin, 31 horses and cattle (V. 11, 3718-3720) ; deaths

and abortions since new stack up to time Complainant closed his case, 23.

Hoffman, 15 horses and cattle (V. 11, 4173-4150-4148), deaths and abortions since new stack up to time Complainant closed his case, 4.

Horses and cattle dead, total, 1073.

Bielenberg (V. 13, 4816), lost 1500 sheep in 1902-3-4.

Soren R. Beck (V. 8, 2982-83-85-87, lost 675.

Total sheep ded, 2175.

The above table shows that on these ranches are the Evans cattle, 50 head foreign cattle, and on Jacobson's ranch 205 cattle brought to feed during the winter and the Bielenberg and Quinlan cattle are cattle recently brought into the valley for to be fed, or about 400 head. So we see almost as many deaths and abortions have occurred on these ranches in about two and a half years as these men have stock. As there is at least 655 cattle counted and included in this table that are not kept in the valley or raised there, and no sheep are now kept in the smoke zone, except a few kept by Bielenberg for immediate slaughter, some 200 head.

LOSSES OF PEOPLE WHO TESTIFIED IN THE CASE FOR COMPLAINANT, WHOSE STOCK WAS NOT COUNTED BY MR. MCCARTNEY.

Many of these people *had quit the stock business or had taken their stock from the Deer Lodge Valley prior to Mr. McCartney's count*, therefore, he found none to count.

Morgan Evans (V. 11, 3985), lost three horses in 1904, three horses in 1905, twelve horses in 1903 and twenty-five cattle. In 1904 lott a lot of calves; ten cows slunk their calves in six weeks.

“I lost some in 1905, three or four. (V. 11, 3986.)

Q. Were they old or young stock?

A. *I didn't have any old ones, the poison killed all the old ones. I have seen like conditions at Swansea, Wales, where there is a copper smelter; that was in 1852-3.” “And the cattle there had the same symptoms they have on my ranch today.”* (V. 11, 3988.)

Mr. Evans states on page 4002, V. 11, that in 1905 *he only got twenty calves and there were thirty-five or forty cows that should have calved if everything had have been all proper.*

Jos. Silver (V. 11, 4242), *on January 2, 1905, took sixty-five cattle and four horses to Parrott's ranch in the Deer Lodge Valley from Divide. The stock was all young stock except on horse. Kept them there until February 22nd. “I took them back to Divide because they began to die. Five died on the Parrott ranch. The rest were in very poor condition. They were scouring and their lips were sore. Their hair fell off in a bunch.*

Four cows lost their calves at Parrott's and five lost their calves after they got back to Divide. *Lost eighteen head.”* (V. 11, 4245.)

Mr. Silver lost nine cows and nine calves and one horse, or a total of nineteen head out of sixty-five in fifty days in 1905-6. (V. 11, 4246.)

The Court must take into consideration *that the only record of losses in the Deer Lodge Valley are the losses of the men who testified in this case. There were fifty or sixty farmers who belonged to the Farmers' Association whose stock losses do not appear in this record, as well as a number of farmers residing in the Deer Lodge Valley*

who do not belong to the Farmers' Association, and the defendants' attempt to *apply the losses of the men who testified to the number of stock counted by McCartney in the entire Deer Lodge Valley is unfair and unjust*, as the Complainant in this case does not claim the smoke zone extends to the limits where McCartney counted stock.

Mr. Evans' statement of thousands of sheep in the smoke zone is untrue and not borne out by the record. There is *not a bunch of sheep kept in the smoke infected portion of the Deer Lodge Valley*, and sheep of Mr. Geo. Johnson, the closest sheep to Anaconda, some fourteen or fifteen miles, are kept on the east side of Deer Lodge River and out of the smoke zone.

Hempstead & Boyle also keep their sheep on the east side out of the smoke zone. *These are the only two men in the sheep business south of Deer Lodge City*. The others run their sheep below Deer Lodge and *entirely out of the smoke infected portion of the Deer Lodge Valley*, and we challenge the counsel for the defense to show anywhere in or out of the record a bunch of sheep in the smoke infected portion of the Deer Lodge Valley.

Evan Evans, Comp. Wit., has no stock in Deer Lodge Valley. Keeps them all in French Gulch.

Pat Lappin, Comp. Wit., page 21178, V. 54, states he had eleven head of cattle in April, 1906. Lost three head.

Gregor Schwend, Comp. Wit., page 2157, V. 54, had thirteen horses in the spring of 1903 (V. 54, 21158.) *Had lost eight head of these horses since the big stack was built* (V. 54, 21159); *says the mares slunk their colts* (V. 54, 21158); states he *lost most of these horses in 1904-5*.

J. O. Allen, Comp. Wit., states on page 21167, V. 54, had

five horses and four cows on his ranch in the summer of 1906. (V. 54, 21168.) *Lost two horses* (V. 54, 21178); states the range is good near his place in the valley; no stock there. He keeps his cattle over in French Gulch and says he does so because he cannot keep them in the Deer Lodge Valley.

Page 21191, V. 54, Frank Bigrass, Comp. Wit., shows he *lost three out of four horses*. States on page 21194, V. 54, one of these horses was an old horse; the other was pretty old too, but not too old to work. The other one was six or seven years old. States the second horse he gives as an old horse, his teeth were good and he ate well and he was working him when he died. (V. 54, 21197.)

So the Court can see that Mr. Evans' statement that Mr. Bigras' horses were 28 and 30 years of age was not true. It only applies to one; that he killed, the old one.

Jno. Malinak, Comp. Wit., had six horses in the fall of 1905. Five died. The doctors killed one, pretty near dead. (V. 54, 21314.) This man lives on Mill Creek. *Shows complete destruction of horses in 1906*. On page 21315, V. 54, states he got two cows last spring and a calf (the spring of 1906.) One cow was dead, and the other just skin and bones and he had to send her to French Gulch. On page 21336, V. 54, he states that the *Arabian that rented his ranch in 1905 had four horses and he lost three of them*. On page 21336, V. 54, he also shows that he *lost five horses in 1905 and states after they all die, he buys another*, as he has to have horses to keep the ranch going.

On page 21342, V. 54, Dennis Callen shows he lost one horse and two cattle, and on page 21348, V. 54, Callen tells Kelley that some of the cattle he bought of him, of the

company, had not have killed them they would have been dead in two or three days any way.

Jno. Karlock, Comp. Wit., states on page 21348, V. 54, that he has to send his stock to French Gulch to keep them from dying. States on (V. 54, 21356) he turned one horse out in the spring of 1906. He got the sore nose and died on him. States he had a colt, born in June and it died in twenty-four hours. States he keeps on his ranch at this time, on Mill Creek, only three horses and one cow. Keeps them in the barn. States he has two colts, two cows and a calf over in French Gulch. States he has lost in the last four years six head of horses.

Angus Smith states on page 653, V. 2, *he lost 41 head of stock from September, 1903 to September 1904.*

(NOTE—Quit business.)

K. D. Smith, page 777, *lost 24 head in the fall of 1904; sold 22 more for \$150.; most of which 22 head cost him \$50 a piece.*

(NOTE—And entirely quit the business.)

Byron Howell's ranch, Howells states on 894, V. 5, the cows wer losing their calves, some of them living only a day or two.

Wm. H. Allen (V. 10, 3779), states his renter had three or four horses there in 1905 and they died.

On page 5674-6, V. 15) Frank Callen *states his cattle continued to die up to 1905; only had one left alive and he gave that away. States he hud twenty-seven horses in 1902 and they are all dead up to this time except one. (1906.) On page 4044, V. 11 states he had 100 head of cattle and BE horses in 1902.)*

(NOTE—Total loss.)

Jno. W. Mitchell, page 4195, V. 11, states he lost three horses and four head of cattle, new stock.

On page 3058, V. 8, Dezourdi states he took 178 cattle in the winter of 1904-5 to feed hay that he bought on the Gibbs ranch. On page 3059-60, V. 8, he says while on the Gibbs ranch "They got as bad as ever I saw any stock. They got down poor and failed. Were smoked." Sold 133 of them for \$15 a head. Shows on page 3059, V. 8, he lost four cows and only got about one-third of the normal calf crop. States these cattle would have been worth \$20 to \$22 a head if they had been all right. States on page 3059, V. 8, that there were thirty to forty of them so weak that he could not get them any farther than his home ranch.

The testimony of these 36 witnesses witnesses for plaintiff, whose stock were counted by McCartney, Deft. Wit., shows there are only five men who have over 25 cattle (who are not engaged in the dairy business.)

W. J. Evens keeps cattle in French Gulch.

E. and P. Staffenson, 31. Shipped cattle there testifying; not there.

Jno. Quinlan, 37.

Elliott, 321.

M. Evens, 52.

Showing an almost complete destruction of the breeding of cattle in the valley. The above five are the only men who have over 25 cattle (excluding men *engaged in the dairy business*) in 1906. While in 1902, as seen by the testimony, there was scarcely one of these 36 men who did not have over 25 cattle and up into the hundreds.

The record shows that *N. J. Bielenberg alone in 1902 had more breeding stock than the entire thirty-six has at this*

time. (Excluding dairy cows), and in the fact of this uncontradicted testimony, Defendants claim no decrease in the stock in the valley, and state that the farmers are as prosperous and conducting their business as they always have.

The record shows directly opposite of what defendants argue.

If the actual death of stock in the valley was the only trouble to the live stock industry, *and none sickened, and cattle bred as formerly,* and could be taken care of, and fed as the farmers used to care for their stock *then it might be possible to arrive at the injury to the stock by giving a percentage of loss in deaths,* but an animal that *is sick and requires extra care and wont breed and continues in that condition,* as does the animals of the valley, they are therefore of *less value* than a *dead animal.*

The stunting in the growth of the cattle and horses that do live is another source of damage, while the lessened price received for them, and the failure to fatten and all these things *cannot be figured in the per cent of death loss, but are nevertheless a great source of damage to the farmers of the valley.* In their per cent of loss the defendants *dodge the sheep losses,* but the record shows every man who has been in the sheep business in the *Smoke zone of the Deer Lodge Valley has been compelled to remove his sheep or sell them for what he could get,* thus one of the most profitable of the live stock industries of any country is entirely destroyed in the Smoke Zone of the Deer Lodge Valley. The horse breeding industry is shown to be ruined as well. The mares foal less than half of the normal amount of colts. Still in view of the many different

causes of damage to stock, defendants quote the per cent of deaths, and in the per cent of deaths do not give abortions in cows, horses or sheep; we challenge the defense to show where their per cent figures are correct, in any particular, as to any year, or for the full period of time given, 1904, 1905 and 1906.

Biclenberg's losses alone are more than they give for the entire valley, and we have not given his losses from October, 1902, to 1904, which is over 400 head, including abortions.

The record is full of testimony of men selling their cattle and horses, when they saw they were being injured at greatly reduced prices, to save themselves from further loss. And the testimony of different witnesses shows that under the conditions under which horses and cattle have to be kept in the valley at the present time to keep them from drying, costs more than they are worth, but prior to the Washoe Smelter they all state the stock business was profitable.

Take the count of cattle made by McCartney on the 31 ranches of Complainant's witnesses (see table) that is the 31 ranches on which he counted the stock and the same 31 men who owned them, and who testified in the case. He finds in March, 1906, a total of 1966 stock, *foreign and stock that belongs there, but 805 of these stock are stock recently brought in to the valley to be fed hay.* There is only 1161 head that *actually were Deer Lodge Valley stock and owned by these thirty-one men,* and on the same table we find that these 31 men have lost, since the erection of the big stack 1012 stock that can be accounted for, and almost every one of these men's testimony shows that their

abortions and slunk calves and colts are not all given, or they have suffered a loss of *almost as many stock as they now have*, from September 1, 1903, to the close of the case. We give the record page where these men swear to their losses, but in Complainant's Brief a more detailed statement is given under the head of the different men's testimony, and in this table of McCartney's are not included the losses of A. Smith, K. D. Smith, Desourdi and M. Evens, who testified to conditions since the erection of the big stack, and *were not given in the McCartney table because McCartney in two cases found no stock in the case of A. & K. D. Smith*, and Desourdi only three cattle, and Morgan Evens stock not given by McCartney. But these four men show a much greater per cent of loss than the average of the 31, in fact, three of them entirely quit the raising of cattle and sold out.

Morgan Evens, Plf. Wit., testimony shows he has lost since 1903 (V. 11, 3985), 43 horses and cattle (V. 11, 3986.) Had a lot of slunk calves in 1904, and lost three or four more cattle in 1905. States he got 25 calves in 1905 (V. 11, 4002), and should have had from 35 to 40, showing enormous losses in cattle and horses by by abortions.

Defendants claim all the deaths reported by all the witnesses for both Complainant and Defendants, as 405 head of horses and cattle, for 1904-5-6, and on the same page gives the number of horses and cattle in the Deer Lodge Valley as 9384 cattle, and 1632 horses, or a total of 11016 head. *McCartney's Deft. Wit., count shows the total number of horses and cattle, on all the ranches of the Farmers' Association, which they own to be 3550, or just about one-*

third as many cattle and horses as Defendants claim are in the Smoke Zone, and for the purposes of this count the Defendants have stretched the Smoke zone to where it never was shown to exist at any time. One thing the Court will readily see by McCartney's testimony is the increase in the stock as soon as you leave the smoke affected portions of the Deer Lodge Valley. The unfairness of the Defendants is very clearly shown in their attempt to apply the losses, as testified to by about 36 men for Complainant and a few for Defendants, to all stock owned in the entire Deer Lodge Valley, regardless of where they are ranged, pastured or kept. We find two men out of the Smoke Zone own more stock than the 107 in it, showing the range stock industry is still profitable in the Deer Lodge Valley, out of the smoke affected portion.

The record shows that *Peter Valiton, alone owns more stock cattle than all the farmers in the Farmers' Association. McCartney's count shows that Valiton owns 1514 stock cattle, but prior to 1902 Nick Bielenberg kept as high as 1500 stock, more stock cattle than is kept in the whole Smoke Zone (excluding milch cows.)*

Defendants give the entire loss in the valley as shown by the record to be 405 cattle and horses in the three years, 1904-5-6.

Complainant shows 31 ranches since the erection of the Big Stack a *loss of 1012 horses, cattle, calves and colts, besides losses of 1200 sheep by Beck and Ryan, and Bielenberg gives a loss of 1500 for three years of 1902-3-4, or 500 a year. The defense is silent on the sheep question in the Smoke Zone.*

The following shows land and stock owned by Defend-

ant witnesses and distance they live from the smelter :

Chas. Bowman, (V. 24), land owned, 360; cattle owned, 155; horses owned, 14; miles, 14.

Chris, Jerguson, (V. 24, 9515). land owned, 280; cattle owned 17 milck cows; horses owned, 17; miles $7\frac{1}{2}$ N. E.

Chas. DuBey, (V. 24, 9311,) land owned, 120, only about 15 acres cultivated; cattle owned 6 milch cows, 6 calves; horses owned, 4; miles, $2\frac{1}{2}$.

A. M. Day, V. 23, 8948)-9, land owned, 160; cattle owned 3, only keep stock temporarily on the ranch. Keep stock on Rock Creek since 1902; horses owned, 4; miles 3 west.

Peter Jessen, (V. 26, 10211), land owned 160; cattle owned, 30 milch cows. About 10 young stock; horses owned, 10; miles 6 east.

Fred Hengell, (V. 26, 10341), land owned, 240; cattle owned, 4 milch cows, 2 yearlings and 1 calf; horses owned, 5; miles, 6 northeast.

J. R. Heasley, (V. 28, 11201), land owned, 160, only 15 acres can be cultivated; horses owned, 4, miles 19 north.

Thos. Parker, (V. 21, 11201), land owned 200, 60 acres hay, 90 tons; cattle owned 18 cattle in 4 or 5 acres; horses owned 14; miles, 7 west.

F. Henault, (V. 19, 7719), land owned 320; cattle owned, 48, 22 calves; horses owned, 15; miles, 7 east.

Total acres of land owned, 2,000. Total number cattle owned, 291. Total number horses owned, 77.

This foregoing is fully explained in the following pages.

Charles Bowman's testimony on page 9433, V. 34, states he *ran his cattle on the west side one year*. (Note—In the Smoke Zone.) *They would not stay on the range but came*

into the ranch early that fall; while ranging on the East side, (out of Smoke Zone), his testimony *shows that they stayed out until snow came, and did well*, while the cattle which he had on the *west side were poor and thin*.

Defendants claim that the Deer Lodge Valley farmer gets as much per head for his beef cattle as they do in other parts of Montana. Bowman states on 9450, V. 14, he sold his three year old steers, beef steers, *from \$25.00 to \$30.00* a head. The Record shows that beef cattle, the same age, from other parts of Montana sell from *\$45.00 to \$55.00 per head*.

On page 9451, V. 24, he states that he sold his cows for *\$21.00* a head. Bielenberg's testimony shows that at this same time he was paying from *\$25.00 to \$28.00 per head for cows outside of the Deer Lodge Valley*.

As Bowman is the *only man* of the Defendants Witnesses residing in the Deer Lodge Valley who has any *stock cattle at all*, we will later call the Court's attention to Mr. Bowman's complete statement in regard to this stock under the head of "Bowman's Testimony."

Twelve men who own land in the Der Lodge Valley testified for the Defendants, or twelve out of the entire number of Free Holders of that Valley. Two of these twelve have no title to the lands on which they live, DuBey and Heasley. Hengell's wife owns the land. One of the eight, Mr. Jessen, is a dairy man, and only three men owns any range stock, Parker, Bowman and Henault. Henault and Bowman are the only men who are really in the stock business at all.

The total of all horses owned is 77 head.

The total of all cattle owned is 291 head.

The evidence shows that the total production of hay on their ranches is about 800 tons, or about the amount cut by one man of the Farmers' Association, Mr. Elliott. *Mr. Elliott had more stock in 1906 than all of them. He kept twice the amount of stock on his ranch alone, in 1902, than all of the actual ranchmen who testified for Defendants have. Only one of these twelve raised any grain for a farm crop, to-wit: Bowman. On two of these ranches, or the ranches of Jessen and Jorgenson, only hay produced. All of the farm crops of Hengell, Heasley, and DuBey, combined, does not exceed 40 acres.*

By farm crops we mean crops produced where it is necessary to plow the land, and do not include hay. Hengell's crop consisted of a few acres in grain, which he cut for hay, and a small garden for his own use.

Heasley's crop, of about 4 acres, about all he raised of everything, and he states there can only be about 15 acres cultivated of his whole 160 acres.

DuBey's crop consists of 12 or 15 acres, mostly potatoes and root crop. He cut only about 2½ tons of hay on his ranch in 1906.

He states he makes his living, principally, by hauling wood and stulls.

Jorgenson's cattle are milch cows.

Henault's crop consists of a *small amount of hay only. Don't pretend to farm.* He leases his own ranch. The ranch on which he lives is a Company Ranch. He worked for the Company for many years.

Day's principal business in the Valley *is a green house. What stock he owns he keeps on Rock Creek since 1902½*

only keeping work horses and two or three milch cows in the Deer Lodge Valley.

Thos. Parker's ranch is not claimed to be seriously injured by Complainants, likewise Mr. Day's, as they are west of Anaconda, and get very little of the fumes at the point where their ranches are situated.

Defendants Counsel *criticizes the Plaintiff in this case for not introducing more farmers to testify.* Defendant's counsel claims 240 farmers outside of the Company's ranches in the Smoke Zone, and as the Complainant only called about 50 as witnesses that *left about 200 at the disposal of the defense*, of which they only called twelve, who were raising stock and farm produce, and the total holdings of all the land of the Defendant's witnesses is 2,000 acres.

Is not this a most miserable showing, considering the statement of Defendants counsel of 240 ranches in the Smoke Zone? Which statement of 240 ranches in the Smoke Zone is not a fact.

Why is it, that among all the ranchers in the Valley, Defendants only called eight? There are several men belonging to the Farmers' Association whose individual holdings of land exceed greatly the entire holdings, of all the witnesses for the defense. The average holdings of land of the Farmers per capita is 500 acres for the entire 107 numbers. The average holdings of the twelve for the Defense is 216, and the total holdings of the Farmers' Association is 55,000 acres as against 2597 acres owned by the witnesses for the defense.

Of these twelve men who own any land in the Valley their testimony shows their principal business is as fol-

lows:

Frank Henault works for Defendants.

A. M. Day, Green House products, all stock, cattle and horses kept on Rock Creek.

Thos. Parker, principally hay; very few stock.

Peter Jessen, *Dairy man.*

Chris, Jorgensen, *Dairy man*, and he raises hay. Sold all of his stock of horses in 1905 to Defendants; keeps only milch cows.

Fred Hengell, Lodging House in Anaconda, Principal Business.

Chas. DuBey, Wood and Stull Business.

J. A. Heasley, only farms four or five acres; no stock but 3.

Chas. Bowman, Farmer and stock raiser; the only general farmer and stock raiser on the stand for Defendants.

Jno. Perkins, Principal business—hay—garden and fruit.

Defendants put on 11 men in addition to the 12 free holders, or a total of 23 men, who live in the Valley, and owned stock. These 11 men were living and conducting business on ranches which they leased from the owners. Their business is given below:

W. J. Benninger, dairy man, west of Anaconda.

Lee Blain, dairy man, west of Anaconda.

A. B. Ensinger, dairy man, west of Anaconda.

Jno. Hammer, Road Supervisor and works for Defendants northeast of Anaconda.

Chas. F. Harrington, dairy man, west of Anaconda.

Jas. A. Howard, dairy man north of Anaconda.

E. W. Oran, dairy man, west of Anaconda.

Pat Sweeney, was in the dairy business; sold to Valarie; now foreman for defendants company on company ranch.

Jno. Varlaine, dairy man east of Anaconda. Bought Sweeney dairy.

Morgan Johnson, dairy man east of Anaconda.

Wm. McMongial, dairy man west of Anaconda.

Nine of the above eleven men are engaged in the dairy business exclusively. One, W. J. Benninger, is principally engaged in the same business but sells a few vegetables. The other one, Mr. Hammer, has a few work horses and a few milch cows. Principal business Road Supervisor, and working for defendants in riding through the valley under salary, and furnishing informaton to the Defendants Company for the purpose of this suit.

Cannot the Court readily see something strange in the manner in which the Defendants have selected their witnesses? Twelve out of these witnesses for defense, out of a total number of 23, who reside and live and have any stock at all in the Valley are dairy men, while they only called to the stand one man, Mr. Bowman, who has any stock to speak of and who conducts a general farm in the Valley.

Excepting, the dairy men called as witnesses by *Complainant*, the defense has called every dairy man except two, (to-wit: E. Jenderson, on B. Howell's ranch, and John Furst), who live in the Valley, and by these dairy men they attempt to prove the condition of the stock in the Valley.

Dairy cows are kept under such different conditions in the Valley that no comparison can be formed between the dairy business and the general condition of the raising of live stock..

One significant thing about the way defense called witnesses to prove conditions of stock is :

First: All the interest most of the dairy men have in the Valley (who testified for Defendants) is confined to *their stock and dairy business; only two of the twelve own any lands in the Valley, to wit: Peter Jessen and Chris. Jorgenson, both of whom are closely related to Jesse Miller or Ben Cossuchte; two of the defendants most active supporters and employed in this case by defendants, and it is to the interest of these dairy men to conceal the facts as much as possible, as the releases of all dairy men taken by the Defendant in 1902-3 show they signed away all future damages to their business as dairy men, and as all the dairy men who have testified in this case for the Defendants but three, were n the Dairy business in 1902, and as only two of the twelve own any real estate in the Valley, the court can readily see it is to their interest to not have the facts as to conditions in the Valley known.*

The defense called as witnesses 12 out of the remaining 14 dairy men not called by the Complainant, while of the Farmers of the Valley, or of the remaining 200 as claimed by Defendants, they only called eight men who owned real estate in the Valley, two of which were dairy men, and only two of the seven who had any range cattle or horses,

Henault and Bowman, which two, ranged their stock on the east side of Deer Lodge Valley, and practically out of the Smoke Zone. The other five, Perkins, Heasley, Hammer, DuBey and Hengell do not own collectively 50 head of stock, and their total cultivated crops do not exceed 50 acres, and the only men owning and pasturing the

same herds of stock year after year in the Valley who testified for Defendants are Henault and Bowman and their stock are pastured on the *east side* of the Valley.

The record shows Parker pastures a few west of Anaconda, but outside of Henault and Bowman the other eight men who testified for defendants have so few stock, which are principally dairy cows, and work horses, that they cannot be considered in the stock business at all, and these two men own a total of about 200 head of stock cattle and no range horses to speak of, probably 12 or 15 head, while the record of the Farmers and stock men show that about 36 men who testified for Complainant owned 5000 head in 1902, *principally range stock*.

Why did not the defense call such men as Jno. Furst, Scott Peck, the Nortens, Geo. Donacich, Morile Streckland, Steve Horvarth, Pat Lappin, Nels Pearson, the Rivers Bros., Henry Magher, and put them on the stand to show the actual conditions in the Valley, as a whole? No, they stopped at Mr. Bowman, the only all round farmer and stock man in the Deer Lodge Valley produced by defendants.

Does the court not believe that many of these men who have resided in the Valley for such a great length of time *were approached by the Defense to testify in their behalf?*

Defendants cast insinuations against the testimony of W. C. Staton, where he states the severity of the weather caused him to suspend his count on the stock. McCartney, Defendants Witness, was counting stock at the same time, March, 1906, and he states on page 10643, V. 27, that from March 9th, to March 19th, (McCartney's Testimony) did

not go out on account of stormy weather. Staton states, page 6052, V. 16, within the last two weeks, (Staton is testifying on March 26, 1906) I counted the stock on 43 ranches, and the storm came up and drove us away. Here again we see the *insinuations* and statements of Defendants' counsel shown to be false by their own witness McCartney, who testifies on account of stormy weather he did not continue his count. Staton was in the Valley at the same time as McCartney, and states exactly as does McCartney.

Who can the Court believe here, witnesses for both complainant and defendants or the statements and insinuations of the attorneys for the defense?

Defendants claim the record shows 240 ranches in the Smoke Zone outside of the Company's ranches. The record shows no such facts, and we challenge the statement. There is no 240 ranches in the entire Valley South of Deer Lodge, and the only man who fixed the limits of the Smoke Zone by legal subdivisions was W. C. Staton, on pages 6023,4-5, V. 16.

Staton states the main Smoke Zone of the Valley is townships 4, 5, 6, 7, North of Range 10 west. In these four townships is most of the arable land of the Deer Lodge Valley, (See Map. Defendants Exhibit). (6035, V. 16) Staton states the Farmers' Association owns 41320 acres in these 4 townships. Defendant Company's, 8920 acres, (6026, V. 16.)

Northern Pacific R. R. Co., (Unfenced lands.) 7880 acres. 17760 acres Government and state lands in these four townships, mostly unfenced. As these 4 townships

have 92160 acres of land, and as the Farmers own 41320 acres, the Defendants 8920 acres, Government State and N. P. Ry., 25640 acres (which is costly open land), very little fenced. We have for the other owners outside of the Farmers' Association only 16280. These figures clearly show that the Farmers' Association own these four townships, $2\frac{1}{2}$ acres to one owned by other individuals, and Staton states on page 6024, V. 16, that there may be parts of these four townships where the smoke may not injure. These four townships Staton gives as the main Smoke zone of the Valley, but on page 6024, V. 16, he gives other portions in townships 4, R. 9, West, 1-3 of Township R, 9 West, $\frac{1}{4}$ of township 6, range 9 west, as well as 2-3 of township 4-11, 6-11, and 7-11 west, he states that is also in the Smoke Zone of the Deer Lodge Valley.

Staton states that all the fenced land shows on the map. (Meaning that which is enclosed in colored borders and shown and marked with the owners name.) (V. 16, 6024.)

We ask the Court to take the Smoke Zone as shown by Mr. Staton and take the map and count the numbers of the ranchers shown on this map, and compare it with defendants statement of 240 ranches in the Smoke Zone. There has not been a witness for either complainant or Defendants who states that any serious damage has occurred outside of this area given by Staton and not all of this area is affected in the same degree.

(NOTE—But, we believe that in time, if the Washoe Smelter is permitted to operate in the same manner as at present, that every ranch in the Deer Lodge Valley will become damaged.)

Defendants state the farmers and stock raisers who ap-

peared for the defendants and gave their number of animals and losses for the three years shows as follows :

1904 per cent horse loss, 119 cattle, 0.4.

1905 per cent horse loss, 2.6 cattle, 2.0.

1906 per cent horse loss, 3. cattle, 1.

The Defendants state, "the Farmers and stock raisers who appeared on the stand," means nothing in this case. As they brought men from over all Montana, trying to show similar conditions to the Deer Lodge Valley, as they give no names of the men, the class as stock raisers or Farmers, and give no numbers of stock owned, the bare statements of Defendants attorneys are worthless to the Court, as showing any such state of facts to be in the record and what is true of the table they submit as to the losses of Defendants Witnesses, applies as well as to their table of the per cent of loss by Complainants' Witnesses. Both worthless.

Defendants again refer to the Standard crops as shown by a bulletin (which was ruled out by the Master.) *The facts in this record, as testified to by the Farmers, are that their crops are getting less and less each year, and this testimony is undisputed.* The Defendants attorneys keep inserting the statement, of lack of water, improper farming and exhaustion of the soil as excuses for this decrease in crops, and not on a single ranch or by a single witness have they shown any shortage of water or improper farming on any ranch. It is probably true that *Mr. Miller, Mr. Crosswhite, Dr. Traphagen and Prof. Blankenship criticized the conditions as a whole, but when asked to confine themselves to the amounts raised on any one ranch, they*

knew nothing about care, water conditions, yield or anything else. Defendants failure to show any of the returns from their 8920 acres situated in the main part of the Valley, clearly shows they could not make a success under the present conditions in the Valley. The defendants take the grain yield of 1905, one year, and apply that as to conditions in the Valley. Why not take the three years, 1904-5-6? The threshing returns of the Valley in the Smoke Zone shows as follows:

THRESTRING TABLE NO. 1.

Ranches Produced for Four Years, 1903-4-5-6.

COMPILED FROM TESTIMONY OF SCHWEND AND
BEAL, Comp. Wit. :

1903	1904		1905	1906
2498	1560	Liffring, Nelson Ranch	1282	568
355	1227	Peter Johnson	963	602
1862	1609	Jno. Quinlan, Mero & Lowery.....	1892	1427
1756	858	Dancich, Geo.	1185	1465
360	323	Johnson, Geo.	1369	960
2080	1576	Bielenberg, N. J.	2140	1429
1862	1494	Elliott, Thos.	530	552
1086	583	Smith, Matt	1041	591
2742	1975	Jones, Chas.	1921	1208
2599	1633	Scott, Dave	1362	1578
3314	2350	Hare, J. B.	2096	2231
714	772	Quinlan Estate	742	818
<hr/>	<hr/>		<hr/>	<hr/>
21228	15960		16523	13529

The twelve above ranches show threshing returns for the four years. The Court will see that in the year of 1903,

when the smelter closed in July, they raised 21,228 bushels of grain, or about 5000 bushels more than they raised the following year, 1904. There was a slight increase in 1905 of 565 bushels over 1904, which might be due to more favorable crop year. *But*, in 1906 these ranches fall to 13529 bushels, or a decrease of 7699 bushels from 1903, the year the smelter was closed July 1st.

THRESHING TABLE NO. 2.
SOUTH OF DEER LODGE.

Showing all Grain Threshed in and out of Smoke Zone.

	1905	1906
P. Valiton	570	350
Alesworth	500	806
Sager	240	432
Normandie	450	1298
Posengar	630	846
DeRosier	480	520
Hovarth	1225	850
Jacques	1490	1239
Donicich	1185	1381
Al Walker	277	203
Smith	1041	591
Scott Ranch	1362	1578
Jacobson .....	....	659
Maher	1125	737
P. Johnson	963	602
Hare	2096	2231
McDaniels .....	....	355
Powers	1324	1704
Johnson	1369	960

Coleman Ranch	547	996
Eliason	563	445
Hempstead & Boyle .....	....	372
Goldie, B.	207	674
Mero	919	814
Lauderville .....	....	709
Chapman	690	604
Lowery	673	613
Mrs. Quinlan	742	818
Elliott	530	552
Bielenberg	2140	1429
Martin .....	....	426
Bohn .....	....	220
Ed. Perkins	161	767
Strickland .....	....	182
A. Peterson	892	791
J. Bennett	2012	1973
Roseberry	499	302
Bowman	2117	3219
Evans	818	639
Donicli	1185	1465
Schute	219	120
Children of God .....	....	829
C. Jones	1921	1308
Liffring	1282	568
DeRosier	480	520
Rivers	1508	620
A. Peterson	82	278
Whitcraft .....	....	500
A. Perkins	433	337
H. Casper	184	98

A. Bennett	1075	....
McCleary	480	....
Schwend	813	....
Beninger	340	....
Day	904	....
Fisher	772	....
Hoffman	231	.....
Levengood	647	....
Jno. Staffanson	426	....
Watts	380	....
	<hr/>	<hr/>
	41700	39839

Decrease of 1861 bushels in 1906 over 1905 for the entire Valley south of Deer Lodge.

THRESHING TABLE NO. 3.

Smoke Association members who threshed in 1905-6, 24 Members:

Threshing yields given.

	1905	1906
Posega	620	846
DeRosier	480	520
Hovarth	1225	850
Jacques	1490	1239
Doncich	1185	1381
Smith	1041	591
D. Scott	1362	1578
Peter Johnson	963	602
J. B. Hare	2096	2231
Geo. Johnson	1369	960
Miro	919	814
Lowery	973	613

Quinlan	742	818
Elliott	530	552
Bielenberg	2140	1429
Peterson, A.	892	791
Bennett	2012	1973
Rosenborough	499	302
Wm. Evans	717	639
Donicich	1185	1465
Jones	1821	1308
Liffring	1282	568
A. Rivers	1508	620
A. Peterson	82	278
	<hr/>	<hr/>
	27335	22968

Decrease of 4367 bushels in 1906 over 1905.

THRESHING TABLE NO. 4.

North of Deer Lodge to Garrison.

	1905	1906
Chas. Williams	1890	3690
Munson	550	787
Christopheson Ranch	2038	2548
Joe Bennett	686	675
Lars Olsen		881
Jno. Bielenberg	1230	1790
E. Laribee	2421	2082
Huffman (not properly cared for on ac- count of sickness in 19061)	1000	726
Brenton (Record page 21658)	2370	981
Zozil	747	974
Bomont		489
Albie	816	715

Henson Bros.	400	400
Reding	745	775
	<hr/>	<hr/>
	14898	18436

Increase of 3538 bushels in 1906 over 1905, below Deer Lodge or out of Smoke Zone.

Threshing Table No. 1 shows in 1903, the year the smelter closed, that the grain crop on these twelve ranches in 1903 exceeded that of 1906 by 7699 bushels; and the testimony of Elliott and Bielenberg shows in the case of Elliott, he had in twice the land in grain in 1906 that he had in 1905. Bielenberg's testimony also shows more land in grain in 1906 than in 1905.

Table No. 2 shows that in 1905 there was 51 men raising grain south of Deer Lodge and in 1906, fifty, or one less in 1906 than in 1905; but the Court will notice that in 1906 Day, Beninger, A. M. Bennett, Thos. Cleary, Schwend, Fisher, Huffman, Levensgood, Jno. Staffanson, Watts, Trapp, eleven men raised no grain in 1906 who had in 1905. All these men who threshed no grain in 1906, the Court will notice their lands are situated in the smoke zone, and are all situated within five miles of the smelter, except in the case of Trapp and Huffman, and this table shows that in 1906 there was produced 1861 bushels less grain south of Deer Lodge than in 1905, showing a decrease in the entire valley in 1906 as compared to 1905, and we have included in table No. 2 all men who threshed grain south of Deer Lodge in 1905 and in 1906. Many of these men included in this table do not claim to be damaged at all.

In table No. 3 we show the men belonging to the Farmers' Association, or twenty-four men who raised and

threshed crops of grain for both 1905 and 1906, who are situated in the smoke zone and claimed by complainant to be damaged,—and what does this table show? That in 1906 these twenty-four men raised on these same twenty-four ranches,—produced 4369 bushels less grain in 1906 than in 1905.

While table No. 4, giving all the men who threshed north of Deer Lodge in 1905 and 1906, and giving the total amount of grain threshed in both 1905 and 1906, shows that the yield north of Deer Lodge increased in 1906 over 1905, 3538 bushels. What better evidence can be produced showing the injury to the grain crops than the actual yields of grain?

These tables as a whole show the following facts: That in the year of 1903, during which year the smelter was closed, the largest crop of grain that has been produced in the valley since the operation of the Washoe Smelter was produced that year it did not operate during the growing season for grain. Twelve men in 1903 raised almost as much grain in 1903 as the same twelve and twelve others did in 1906.

Taking all the grain raised south of Deer Lodge, we find a decrease of about 5 per cent. as a whole, but take the grain raised on the ranches of the Farmers' Association in 1905 and 1906, and we find the percentage of decrease much greater, or about 25 per cent.

There was threshed in the year 1905 on all the ranches of the Farmers' Association, or thirty-three in number, 33260 bushels, while in 1906 all the grain threshed for members of the Farmers' Association on twenty-eight ranches was 25,567 bushels, or a decrease of 7693 bushels

raised by members of the Farmers' Association in 1906, or a decrease of grain raised of over 23 per cent. in 1906 as compared to 1905. These threshing figures further show that twelve men in 1903 raised almost as much grain as is raised by all the farmers in the Farmers' Association in 1906, showing a steady decrease in the yield of grain since 1903.

And there are a number of men who have entirely ceased to raise grain at all in the immediate vicinity of the smelter, to-wit: Levensgood, Day, Watts or Stuckey Ranch, Wm. J. Evans, W. C. Staton, Section 16 (or Company farm), George Parrott, Frank Threlkeld, K. D. Smith or Miller Ranch, John Staffanson, Eph Staffanson; in fact, the nearest threshing done in the valley, as shown in the record, is on the Henault Ranch on Lost Creek in 1906.

On page 21741, Vol. 55, W. H. Staffanson states on this ranch in 1906 was threshed *from ten acres of land oats and wheat to the amount of 140 bushels, or 14 bushels to the acre.*

Page 21760, Vol. 55, Staffanson states *this ten acres was clover and potato land. The ranch on which only fourteen bushels to the acre was produced is the property of Frank Henault, defendants' witness, so we see people who are not smoke farmers (as the Farmers' Association members are called by defendants' counsel) can not produce any more to the acre than members of the Farmers' Association when situated in the Smoke Zone.*

The defendant produced Pat Sweeney, who testified on direct that the crop on the Villeneuve Ranch, of one of the defendants' farms, looked good.

Mr. Freeman, on another Company ranch, testified on

direct to putting in grain in the spring of 1906. Nothing further heard of these grain crops. The only witness for the defendants who lived in the Deer Lodge Valley who threshed a crop of grain in 1906 was Charles Bowman, who had 202 bushels more grain in 1906 than in 1905.

Blain and Orm, in 1906, cut their grain for hay (V. 62, 24446); no threshing.

Page 24465, Vol. 62, Wm. Benninger cut his grain for hay.

Day, page 24471, Vol. 62, no threshing given on this ranch in 1906.

Page 24502, Vol. 62, McMonegal, company tenant, cut grain for hay.

The defendants only call one witness on sur-rebuttal from the Deer Lodge Valley who raised grain in 1906, and have in no way been able to contradict the evidence of Mr. Schwend, who, on page 21571, Vol. 55, states in answer to the following question:

“Q. Mr. Schwend, I will ask you to state whether or not the grain yield was better or worse as you came near the Washoe Smelter in the valley?

A. *The only good grain we got was below Deer Lodge.*”

Schwend, on page 24524, Vol. 55, states there was more grain below Deer Lodge (*meaning more grain to the same amount of straw*); *could only thresh from twelve to fifteen hundred bushels in a day above Deer Lodge, while below Deer Lodge could thresh 2,000 bushels or better.*

Page 21661, Vol. 55, Schwend states the straw was so brittle in the vicinity of Matt Smith's and Dave Scott ranches that it was difficult to save the grain, and in his testimony describes the condition of the straw in the upper

valley to be in about the same condition on most of the ranches, "*brittle, breaks into chaff.*"

Page 21664, Vol. 55, Schwend states threshed crops of oats and rye grown below Deer Lodge that was not irrigated at all, and it threshed as good as any, meaning the straw did not break up into chaff, and had no trouble saving the grain.

Most of the witnesses for complainant in this case *have described the burned condition of the hay and grasses, and this brittleness of the straw clearly shows the injury to the grain crops in the same manner.*

Defendants criticize complainant for only being able to give the threshing returns from thirteen ranches for 1903-1904-1905-1906, while they, the defendants, come in with *only eleven men's yield for one year*, and ask the Court to find by the yield of that one year (1905) that the grain crop on these ranches is more than normal, as compared with *a ruled out Bulletin*.

Which is more fair, the yield on thirteen ranches for a period of four years or on eleven ranches for one year? Why did not the defendants give the returns from these ranches in 1906, or at least the ones who raised and threshed grain? Especially as they put on men to testify to the extra good condition of crops in the Valley in 1906. But this testimony so given by defendants' witnesses in regard to 1906 was founded on how *crops looked, from a casual examination made principally while riding along the public roads*. The defense did not attempt to show by *a single witness what was the actual yield on one farm of the entire Farmers' Association in tons of hay, or bushels of grain, for the year of 1906*, but only guesswork testi-

mony was introduced in regard to crops, and only two men testified to crops being better, to-wit, *Mr. Crosswhite and Mr. Miller, both commercial witnesses.*

We will here follow with a table giving the returns in bushels for the years of 1905 and 1906 of all the men as given by defendants:

1905	1906
<hr/>	<hr/>
1490	1230

(George Jacques, 45 acres drill measure.)

(Vol. 7, 2768): “Fair yield for my ranch 50 bushels to the acre. Since the smoke oats have only averaged about 25 bushels.”

In giving Jacques’ grain yield for 1905 they *cut out the oat yield and only take the wheat*, which Jacques states was extra land and had been extra well fertilized. Only about 16 acres taken here in 1905, while Jacques states on page 2805, Vol. 8, wheat on the class of ground he had in should have gone from 50 to 60 bushels to the acre, while he only got about 42 bushels; and further states (Vol. 8, 2805) *the oat crop was very poor in 1905*, and on page 21140, Vol. 54, Jacques states *his grain crop in 1906 was not as good as in 1905*, especially the wheat. Jacques states this land that was in grain in 1906 was extra heavily fertilized. Still, it only went 27 1-3 bushels to the acre in 1906. Grain all oats in 1906 except six acres in wheat.

1905	1906
<hr/>	<hr/>
1921	1308

(bushels)

CHAS. JONES (V. 8, 3029) :

Grain not injured by smoke in 1902. On page 3006, Vol. 8, Jones states oats went 50 bushels to the acre in 1902. In 1905 only went 22 bushels, showing a steady decrease. In 1906 oats went (page 21278, Vol. 54) 15 bushels, and wheat 22 bushels to the acre.

Page 3032, Vol. 8, wheat went 28 bushels to the acre in 1905.

The Court will see defendants give Jones' yield of oats in 1905 as 1442 bushels from 53 acres, which would make the yield of Jones' oats 27.2 bushels to the acre.

Jones states positively his oats only went 22 bushels to the acre in 1905, so we see where the *defendants' counsel* has raised the yield of Jones' grain five bushels to the acre.

Defendants' counsel, in order to arrive at the number of acres of Mr. Jones had in grain in 1905, was compelled to take the amount of wheat and oats threshed and divide it by the amount it yielded per acre, and you arrive at the acreage in grain of Mr. Jones in 1905.

C. E. Schwend, Comp. Wit., page 7050, Vol. 18, threshed 489 bushels of what (note) at 28 bushels to the acre, 17 acres.

Of oats 1442 bushels, at 22 bushels to the acre, 70 acres, *or 17 acres more in grain in 1905 than defendants give.* They give the number of bushels raised correctly, but on the oats they give the acreage 17 acres less than it should be in order to increase the yield per acre, but in 1906 the land only went 15 bushels of oats to the acre and 22 of wheat, showing a decrease in yield in oats of 35 bushels

to the acre and 16 bushels of wheat to the acre, as compared with 1902.

<u>1905</u>	<u>1906</u>
800 bushels.	None.

W. F. STEPHENS, on page 3243, Vol. 9, 25 acres of oats 800 bushels, not 818. Defendants again assume 18 over what is stated.

<u>1905</u>		<u>1906</u>	
Oats.	Wheat.	Oats.	Wheat.
467	248	290	278

N. LIFFRING, pages 3310-11, Vol. 9, shows in 1903 his grain averaged 24½ bushels to the acre. In 1904 (page 3311, Vol. 9) averaged 14.5 bushels to the acre. In 1906 crop decreased to 568 bushels, which in 1906 also includes the *Robert Nelson Ranch*, while in 1903 these two ranches threshed 2498 bushels, *a decrease in grain production on these ranches in four years of about four-fifths.*

<u>1905</u>	<u>1906</u>
678	None.

GREGOR SCHWEND RANCH:

C. E. Schwend states on page 3539, Vol. 9, this crop of grain raised on alfalfa land; been in alfalfa four or five years, and plowed up. Was oats and wheat (page 3538, Vol. 9); was a fine crop of straw, but the grain was not in it; many hulls empty.

<u>1905</u>		<u>1906</u>
1892	(Mero & Lowery.)	1427

JOHN QUINLAN RANCH (Vol. 10, 3580) :

States 50 acres in grain in 1905. (V. 10, 3596) : States owned this land since 1864, and lived there.

(Page 3600, Vol. 10) : "From 50 to 60 bushels of oats to the acre, from that up to 75; a fair crop for my land."

(Page 3601, Vol. 10) : "We got 75 bushels to the acre most every year." (*Prior to 1902.*)

1905	1906
<hr/>	<hr/>
235	None

FRANK KREIDER :

Raised on potato land (V. 10, 3870), raised as high as 80 bushels to the acre of speltz on this land. Used to get 40 bushels of oats and wheat on an average.

(Page 3908, Vol. 10) : The ground was extra and seed extra and a good season, still his average was less than 30 bushels to the acre.

1905	1906
<hr/>	<hr/>
Wheat. Oats.	Grain.
449 369	639

WM. M. EVANS :

On page 3916, Vol. 10, Mr. Evans states positively he had in 57 acres and it yielded 14 bushels to the acre, while in 1903, the year the smelter was closed, his grain yielded 28 bushels to the acre.

(Page 3949, Vol. 10) : Evans states grain was well filled in 1905. Shows it had sufficient water.

(Page 3960, Vol. 10) : States land yielded 45 bushels to the acre in 1901.

Defendants give Evans only 40 acres of grain and assume that one-half of this 40 acres was wheat and one-half oats, and makes the yield on wheat 24 bushels and oats 18 bushels.

By cutting down Evans' acreage they are again able to increase the yield, and the Court will see by Mr. Evans' testimony he never gave the total number of bushels threshed in 1905, but states it went 14 bushels to the acre, and he had 57 acres, and the amount threshed in 1905, as given in C. L. Beal's testimony, 818 bushels of wheat and oats, confirms Evans' testimony as to the amount of land: 818 divided by 14 equals 57, acreage in 1905, and not, as stated by defendants, 40 acres.

1905	1906
<hr/>	<hr/>
530	552

THOS. ELLIOTT:

(Page 4354, Vol. 11): Elliott states he had in potato land in 1905, and it should have gone 40 bushels to the acre.

(Page 4361, Vol. 11): Elliott's grain in 1904 went 37½, 50 acres in 1904, threshing returns, 1862 bushels, or 37½ bushels to the acre.

(Page 21773, Vol. 55): In 1906 Mr. Elliott had 53 acres in grain. Threshed 553 bushels, or only about 10 bushels to the acre in 1906.

1905		1906
<hr/>		<hr/>
Wheat.	Oats.	Grain.
262	1852	1429

N. J. BIELENBERG:

The yield of Bielenberg's land is about 26 bushels of wheat, oats 70 bushels in 1905.

(Page 4580, Vol. 12) : States his land is as good as any land in the United States, and that 70 bushels to the acre *for this land is not a good crop*, and he has raised from 120 to 130 bushels to the acre on this land at different times. In 1906 this land produced only 46 bushels of oats and of wheat 27 bushels to the acre.

(Page 4639, Vol. 12) : States "an average crop of wheat on my land would be 40 to 45 bushels to the acre," showing an enormous decrease in 1906 on his grain crop.

1905	1906
—	—
Wheat.	Wheat.
354	240

A. PERKINS, Comp. Wit. (V. 55, 21711) :

The wheat that took first prize at the Deer Lodge County Fair in 1905. This wheat went 17 bushels to the acre in 1905; in 1906, 12 bushels. In 1884 this land produced 50 bushels of wheat to the acre. (V. 55, 21720.)

(NOTE.—The dust from this 1905 grain, when threshed, was analyzed for arsenic by Dr. Swain (page 7020, Vol. 18), and showed .059 arsenic, calculated as As₂O₃, and shows beyond a question that the fumes from the smelter injured this crop of wheat.)

(Page 21727, V. 55) : States only one acre, or the lower patch of wheat, got frosted in 1906. The 20 acres was not frosted.

Albert Perkins states on page 21716, Vol. 55, that *he took second prize at the Deer Lodge County Fair in 1906 with this wheat that only went twelve bushels to the acre,*

and further states that this wheat was *frostbitten*. This testimony of Mr. Perkins will doubtless give the Court a nidea of what kind of a “*job*” the *Deer Lodge County Fair* was. In fact, it was no county fair at all except in name, but simply a straight Amalgamated Anti-Farmer Fair.

This table gives amount of grain raised in 1906, as well as in 1905, of the eleven men whom defendants’ counsel quote in 1905:

SHOWING A DECREASE OF 4044 BUSHEL.

Name.	1905	1906
George Jacques.....	1490	1230
Charles Jones	1921	1308
William F. Stephens.....	800	.....
N. Liffering	715	568
G. Schwend	678	.....
John Quinlan (Mero & Lowery).....	1892	1427
F. Kreider	235	.....
William M. Evans.....	818	639
Thomas Elliott	530	552
N. J. Bielenberg.....	2114	1429
A. Perkins	354	240
	<hr/>	<hr/>
Totals	11547	7503

One significant thing shown by the record is that on the above ranches given in the *defendants’ table of these eleven men* is that there were 4044 bushels less produced on these ranches in 1906 than in 1905.

The testimony of these eleven men show that in most of the cases where the acreage of land is small it was

planted on the best land they had on the ranch, and every one of these men's testimony shows the yield has been decreasing greatly since the operation of the smelter, and defendants' table is not correct, as in the case of Jones they have raised the yield five bushels per acre more than Jones' testimony shows. And in the case of Wm. Evans, they have decreased in their table the land in cultivation, which causes an increased yield per acre.

Which class of testimony is the Court going to take, a Bulletin, purporting to give the average yield of Deer Lodge County, which, at the time it was issued, included what is now Powell County, or the sworn testimony of these eleven men?

The defendants only try to show by this table what these men raised for *one year*, 1905. For purposes of *comparison as to this Bulletin*, and while the defendants' table shows in 1905 these men raised 29 7-10 bushels of wheat and 33 2-10 bushels of oats, the evidence of all of these men show this is not a normal crop for their lands. While in 1906 these same ranches *only produced 7503 bushels; while in 1905 they produced 11547 bushels, a decrease of 57 per cent.*

In the case of Mr. Thomas Elliott, he shows he had in 53 acres of land in 1906 and in 1905 20 acres, and got only 22 bushels more grain in 1906 than in 1905.

Take the eleven men given in defendants' table who produced grain in 1905 and 1906 and we find the production on these ranches has *decreased 38 per cent, in the year 1906 as compared to 1905.*

The raising of grain and hay and stock in the Deer Lodge Valley all show a great decrease since the erection of the

Washoe Smelter. Many men who were raising grain for many years prior to the erection of the Washoe Smelter now do not raise any. *Take a distance of some miles from the smelter and you do not find a breeding herd of cattle, or where any grain was threshed in 1906; have quit the raising of grain and cattle and horses.*

Defendants state one reason for the lessened amount of grain raised in the Valley since 1902 is the fact that people have been putting in more alfalfa and using the grain land for alfalfa. *The only men who testified to seeding any land to alfalfa are Jones and Liffering, and both of them have not seeded 75 acres since 1902, but what does the hay yield show in the Valley? A steady decrease in tons per year. Must not something still be wrong, even if defendants stated conditions of more land in hay and less in grain? If that is true, if conditions were normal, undoubtedly the hay yield should be increasing. While the actual facts are the hay is decreasing as well as the grain and other crops.*

The statements of Jesse Miller and Ben Crosswhite in the change from grain to alfalfa in the Valley *does not apply since the year of 1902, but to a date much prior to 1902.* But while there was probably less grain raised in the Deer Lodge Valley along about 1902 than in 1888 or 1889, the time they began to plant alfalfa in the Valley, the fact remains that up to 1902 grain yielded well in the Valley to the acre; while all of the testimony shows since that time it has decreased to such a great extent many men have ceased to raise grain at all, and in the case of the men who are still raising grain, it has decreased from 25 to 75 per cent. in yield per acre.

Defendants claim two threshing machines in the Valley

in 1906. That is true, but outside of the Schwend machine *the other machine only threshed for the owners of the machine, and 140 bushels on Henault's ranch on Lost Creek; or three men were threshed for by one of the two machines.* This machine did no threshing outside of these three places. While defendants are correct in their statement of *two machines, complainant was more correct in his statements of one machine, for there was only one machine which threshed for hire in the Valley in 1906, or only one commercial machine.*

Defendants again refer to the complainant only producing 40 farmers out of 240 to testify. *The defendants only had one general farmer and stock-raiser, Mr. Bowman. The record does not show 240 farmers who own land in the Valley, or anywhere near that number, but the complainant showed his generosity in the calling of only 50, leaving all the remainder for the defense.*

The complainant put on witnesses who were freeholders and old residents in the Valley from every affected locality, and as the defendants have not been able to dispute the testimony of any of these 50, why should more have been called?

W. C. Staton, in his testimony, gives the names of the members of the Farmers' Association, and also states that *he personally presented claims to the Defendant Company for damages to the property of these men caused by the Washoe Smelter, so the defendants knew many months prior to the commencement of this action who claimed to be injured. Why were not some of these men who did not testify for the complainant in this case called? Some were called by the defense to testify to selling horses or cattle*

to the Defendant Companies, *but were not asked a single question in regard to their crops or condition of their stock or farms.* Simply asked if they sold certain stock to the defendants, and defendants' counsel strenuously and successfully prevented any cross-examination on any point that was not brought out on direct.

But of course complainant could not present his case to please the defendants' counsel, and it is not to be expected. We leave it to the Court as to who has tried to present all the issues in this case in the most fair manner, Complainant or Defendants.

The Defendant Companies had their men and lots of them all over the Valley in 1905 and 1906, survey parties, veterinarians, botanists; interviewed most of the farmers; must have seen some of the conditions. *But on no material point has a single witness for the defense disputed the testimony of a single farmer witness for the complainant.*

Defendants measured all the hay in the Valley, but did not produce a witness to tell what these measurements were, so undoubtedly the farmers' testimony as to the hay yield is correct. Schwend and Beal gave the actual amount of grain threshed, their figures not disputed, so the conditions of crops in this valley, as testified to by the witnesses for complainant, *must stand as a fact.*

Defendants again allude to the *enormous quantities* of hay and produce bought from the Valley, and at good prices. All the hay the record shows that has been sold in Anaconda and Butte *since the smelter trouble could have been produced on two ranches of the Deer Lodge Valley, and the record shows that in the year of 1905 the W. C. Staton Ranch cut more hay in one year than the McCallum*

& Cloutier Mercantile Company bought in the entire Valley for the years 1902-3-4-5-6. All the hay Allen (the only exclusive hay merchant in Anaconda) bought from the Deer Lodge Valley in one year could be produced on about fifty acres of land. This enormous amount of hay bought in Anaconda, most of which was bought by McCallum & Cloutier Mercantile Company, who bought more produce than all the other merchants in the city combined, defendants state they bought \$27,000 worth of produce. True, but this amount is so small, considering the number of farmers and their holding of land, it amounts to practically no purchase at all.

UNITED STATES OF AMERICA
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

FRED J. BLISS,

Appellant,

VS.

WASHOE COPPER COMPANY, and
ANACONDA COPPER MINING COMPANY.

Appellees.

Brief and Argument for Appellant

VOL. VI

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C. M. SAWYER,

R. L. CLINTON,

Solicitors for Complainant and Appellant.

FILED

N.o 1738

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FRED J. BLISS,

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VS.

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Appellees.

Appellant's Brief.

ABSTRACT OF TESTIMONY SEPARATED FROM
THE BRIEF AS TO CONDITIONS EXISTING ON
THE BLISS RANCH AND IMMEDIATE VICINITY,
ALSO CROP CONDITIONS EXISTING IN DEER
LODGE VALLEY.

PURCHASES OF VALLEY PRODUCE BY ANA-
CONDA MERCHANTS AND PRICES PAID.

Let the Court take into consideration the fact of 55,000
acres of land owned by the Farmers' Association alone in
the Valley and take four years, or the purchases of produce
for forty-eight consecutive months, and we have records

of the sale to *McCallum & Cloutier Mercantile Company* of an average purchase per acre for each twelve months, or one calendar year, of 25c per acre per year.

Produce sold in Anaconda during the years of 1902-3-4-5-6, or five years. *What did they actually buy?*

So the Court can get a clear idea of the amounts bought by *McCallum & Cloutier Mercantile Company* from the Deer Lodge Valley, as shown by the testimony of Mr. Conyne, we have prepared and put it into the form of a table, so the amounts bought and of what they consisted can be seen at a glance, for the four years since the operation of the Washoe Smelter; also the amounts bought by other merchants of Anaconda are to be found on other tables attached to this Brief, and we believe we are conservative when we state that *McCallum & Cloutier Mercantile Company* bought two-thirds of the produce marketed in Anaconda during the period of this controversy.

For the years of 1902-3-4-5-6, bought from the entire Valley 656 tons of hay at an average price of \$10.50 a ton.

Average crop of outside hay for same period 14.82, or a difference of \$4.30 a ton.

All the hay *McCallum & Cloutier Company* bought in four years could be produced on a hay ranch of 100 acres, which would only have to cut one and one-half tons to the acre a year to supply *McCallum & Cloutier Mercantile Company* and *W. J. Allen*. Their combined purchases of hay could easily be grown on 160 acres of land. These figures include all the hay purchased in the entire Deer Lodge Valley, but from the *Farmers' Association* members of 107 men *McCallum & Cloutier* only purchased \$4,096.04

worth of hay, about 400 tons. An amount so small it is not worth considering.

Let us see what it amounts to for each ranch per year; about \$10 a year for each ranch of the Farmers' Association, or *less than one ton of hay to a ranch a year*. And still, in the face of these facts defendants claim a splendid market for hay and at a good price. The record shows many men can not sell their hay to the merchants or liverymen of Anaconda at all, and what hay has been bought in any quantity, except of 1903 crop, by the above firm was bought at a distance from the smelter.

Of grain, oats and wheat bought from the *entire Valley in five years* \$8,116.49; *bought from members of the Farmers' Association in five years*, \$6,750.26, or \$1,676.25 *total amount purchased per year, or a purchase of \$15.66 worth of grain per year per ranch.*

Bought \$15,227.64 *worth of potatoes in the four years in the entire Valley. Paid out as much money for potatoes as for both hay and grain.*

Bought potatoes of members of Farmers' Association, \$8,124.86; total for one year, \$2,031.21; total per ranch of 107 men, per year, \$18.98.

Amount of vegetables bought in four years in the entire Valley, which includes every vegetable grown in the Valley except potatoes, \$5,140.82.

Total bought from the members of the Farmers' Association in the four years, \$2,735.31. The total purchases per year, \$683.82. *Total average purchase per ranch per year for the 107 ranches of the Farmers' Association, \$6.39.*

McCallum & Cloutier's total purchases of hay, grain, po-

tatoes and vegetables from members of the Farmers' Association :

Hay	\$4096.04
Straw	505.42
Grain	6750.26
Potatoes	8124.86
Vegetables	2735.31
Butter	202.79
Eggs	1552.02
<hr/>	
Total	\$23966.70

Divide this \$23966.70 by four, the number of years over which these purchases extend, and we have \$5991.70 as the total average purchase per year. Divide the purchase of one year by the number of members of the Farmers' Association (107), and we have the average amount per year purchased per farm, or \$56 per farm a year. And as the record shows, McCallum & Cloutier are the principal buyers of farm produce in the City of Anaconda; the testimony of Conyne clearly shows that if the farmers of the Deer Lodge Valley had to depend on Anaconda for a market for their produce they could not sell enough in Anaconda in a year to buy groceries for an average family for one month.

The testimony of Mr. Conyne shows he has paid out for Valley produce twice as much money for potatoes alone as he has for hay, and as much for potatoes as both hay and grain. What does this show? Simply the following: that the merchants and people of Anaconda will and do purchase root crops, or crops grown under ground, which are only grown in limited quantities in the Valley, but of the

main crop, or hay crop, they purchase very little, while the testimony of all the farmers show they can raise very little grain, and the amount purchased by Mr. Conyne of both oats and wheat shows they do not have it to sell, and clearly shows they can not produce it at a profit.

The testimony of the farmer witnesses for complainant shows that what potatoes they can produce they *can sell*, and the testimony of defendants' witness, Conyne, shows he buys them.

The farmers' testimony shows they can not sell their hay in any amount in Anaconda or Butte, and the testimony of Conyne shows he doesn't buy it in any quantities.

Take the average daily ration of hay for a horse as forty pounds, and McCallum & Cloutier do not buy enough hay in a year from the Valley to feed thirty horses.

The *great market for the Deer Lodge Valley hay prior to the Washoe Smelter was feeding it to stock, on the Deer Lodge Valley*, and the record shows that prior to the erection of the Washoe Smelter *from one-half to one ton of hay per head per year was sufficient to winter cattle*, and the testimony of numerous witnesses for both complainant and defendants testify that prior to 1902 *range horses or breeding herds of horses were seldom fed any hay*, and when fed at all very little was fed, and only for short periods, and hay was fed and stock raised at a profit prior to 1902.

The testimony of all the farmers' witnesses for complainant shows that prior to 1902 they had ready sale for all hay produced in the Deer Lodge Valley which was not required for their own use at good prices, while Conyne's testimony clearly shows at the present time no market for Valley hay.

In 1901 McCallum & Cloutier shipped into Anaconda \$1742.80 worth of hay, while in the year of 1904 they shipped in \$4060.70 worth of hay at an average price of \$15 a ton f. o. b. Anaconda, and refused to buy hay of W. C. Staton, Angus Smith to pay a debt they owed them. Still, defendants' *counsel argues* a normal market, and a splendid market for Valley hay, and at good prices.

Defendants' counsel states there is no difference in the prices paid for Valley hay than hay of the same class from outside points. Mr. Conyne's testimony shows he bought from the entire Valley in the year of 1904 hay to the value of \$1948.33, in weight to the amount of 392,739 pounds, or 196½ tons, *and shows what hay he did buy cost him less than ten dollars a ton f. o. b. Anaconda, while the same year he paid fifteen dollars on an average f. o. b. Anaconda for all outside hay.* Conyne's testimony clearly confirms the testimony of Bielenberg and Staton, who state Valley hay sells from \$4 to \$6 a ton less than outside hay.

Defendants attempted to show by Mr. Cogdon a market for Valley hay in Butte. What did Cogdon testify to? Simply this—he had sold one or two cars of hay in the entire period of this controversy. The testimony of Angus Smith, Frank Threlkeld, George Jacques, W. C. Staton, Frank Kreider and others shows Butte merchants will not buy Valley hay. The testimony of W. J. Allen, defendants' witness, and a hay dealer in Anaconda, shows he was only able to sell one car of Valley hay in Butte during all these years.

The testimony of the Butte dairymen who fed Valley alfalfa, shows they did not feed Valley hay continuously,

but when they fed it all *they either mixed it with other hay or fed it every other feed.*

In a city the size of Butte, the largest market for hay in the State of Montana, *the defendants were only able to produce one man who was in the hay business, Mr. Congdon, and his total purchases, as shown by his cross-examination, did not exceed four or five cars of hay, and all were confined to a short period of time, in the fall and winter of 1906; and here again the defendants' own witness shows no market for Valley hay. He states he is a large dealer in hay, but has bought and sold only four or five cars during the period of this controversy.*

When the following facts are taken into consideration, first, that Butte is the largest hay market in the State of Montana; second, that numbers of the farmers testified the merchants of Butte would not buy their hay and gave their names, and the different farmers (taking the names of the merchants and liverymen of Butte given by all of the farmer witnesses for complainant, and the names given by them, taken collectively), include most all of the heavy purchasers of hay in Butte; third, that a city of 70,000 people, such as Butte City is, and situated as Butte is, must consume thousands of tons of hay per month. All the actual purchases of Valley hay the defense was able to show was these four or five cars, and those were not purchased for cash, but on account, and on page 19865, Vol. 50, Congdon states he did not tell where this hay was from when he sold it.

It is not a very significant fact that not a single dealer or merchant in Butte whose name was given by a witness for complainant as refusing to purchase hay from the Deo

Lodge Valley was called to the witness stand by the defendants, either on their direct or on sur-rebuttal.

The testimony of W. C. Staton shows he advertised 1100 tons of hay for sale at auction on October 19, 1905, in the Evening News and the Anaconda Standard (the News published in Butte, the Standard published at Anaconda, but having the largest circulation of any paper in Butte), and the best price obtained for his timothy hay was \$5.25 a ton in the stack. Add cost of baling and loading, \$3.25 a ton, and freight \$1 a ton, \$9.50 f. o. b. Butte, while the testimony of Conyne shows hay of the same class at the same time, October, 1905, was costing him \$9.50 f. o. b. Bitter Root and Bozeman, or \$13.30 f. o. b. Anaconda or Butte. (Page 12590, Vol. 32.) The defendants' counsel have emphasized *timothy hay*; Conyne's testimony, defendants' witness, page 12590, Vol. 32, *shows only one dollar a ton difference between the price of timothy and mixed hay*. Conyne's testimony also shows he *bought much more mixed hay from outside points than he did timothy*, showing as good a market for mixed hay as for timothy; the only difference, that he pays \$1 a ton more for timothy than mixed hay; and the testimony of Mr. Conyne and also Mr. McCallum and Mr. Staton shows they refused to buy Staton's hay at any price, even on account.

TOTAL HAY AND GRAIN PURCHASES OF McCALLUM & CLOUTIER FROM OUTSIDE POINTS FOR 1901.

Name, Location, Vol., Page, Date—	—HAY—		—OATS—		—WHEAT—	
	Weight.	Price.	Weight.	Price.	Weight.	Price.
Appolonio & Fowler, Victor, Mont., V. 32, 12579, May 4-10.....	35523	\$93.93				
Ana. Cop'r Min. Co., Hamilton, Mont., V. 32, 12580, May 18-22.....	52645	289.54				
Appolonio, Waters & Co., Victor, Mt., V. 32, 12580, Jun. 8-20.....	45125	210.66				
Same, V. 32, 12581, July 26-Dec. 1.....	45425	261.06				
Benepe, Owenhouse Co., Bozeman, Mont., V. 32, 12581, July 2.....	27355	122.01				
Timothy						
Benepe, Owenhouse Co., Bozeman, Mt., V. 32, 12582, July 18.....	30430	182.58				
Bozeman Mill Co, Bozeman, Mont., V. 32, 12582, Feb. 18-July 8.....			228530	2216.27		
Bozeman Mill Co, Bozeman, Mont., V. 32, 12582, Feb. 18-July 8.....					65000	518.00
Bozeman Mill Co, Bozeman, Mt., V. 32, 12584, May 28-Jun. 25.....			104895	1311.18		
Bozeman Mill. Co., Bozeman, Mont., V. 32, 12584, June 8.....					11600	116.00
Timothy						
Henry Buck & Co., Stevensville, Mont., V. 32, 12584, Dec. 16.....	17685	88.42				
Thomas S. Dawes, Bozeman, Mont., V. 32, 12584, Feb. 16.....			33375	300.33		
Henry Buck & Co., Stevensville, Mont., V. 32, 12584, Oct. 29.....	19319	96.56				
Royal Mill. Co., Great Falls, Mont., V. 32, 12584, Sept. 12-30.....	8630	64.90				
Royal Mill. Co., Great Falls, Mont., V. 32, 12584, May 20.....			2962	43.85		
Kalispell R. Mills & Ele., Kalispell, Mt., V.32, 12584, July 26-29.....			60000	968.00		
Appolonio, Waters & Co., Victor, Mont., V. 32, 12584, Aug. 12.....	17640	92.61				
Henry Buck & Co., Stevensville, V. 32, 12584, Sept. 25-Oct. 7.....	45060	238.55				
	344837	1740.82	429762	4839.63	76600	634.00

This table shows very small purchases from outside of Deer Lodge Valley prior to the operation of the Washoe Smelter, and this year of 1901 was during the construction of the Washoe, and more men and teams employed that year than have ever been before or since.

TOTAL, OUTSIDE PURCHASES OF McCALLUM & CLOUTIER MERC. CO. OF HAY AND GRAIN FOR 1904.

Conyne Cross Ex. Vol. 30.

Name, Location, Vol., Page, Date—	—HAY—		—OATS—		—WHEAT—	
	Weight.	Price.	Weight.	Price.	Weight.	Price.
Honeywell ranch, New Chicago, V. 32, 12594, Jun. 15, July 7	55595	408.77				
Honeywell ranch, New Chicago, V. 32, 12595, July 26	29069	210.75				
Ana. Min. Co., Hamilton, Mont., V. 32, 12595, Sept. 26-28	40888	214.67				
Appolonie, Waters & Co., Victor, V. 32, 12595, Aug. 2, Oct. 8	149374	747.06				
Bozeman Mill. Co., Bozeman, Mt., V. 32, 12595, July 20, Jun. 29			243900	2626.25		
Bozeman Mill. Co., Bozeman, Mt., V. 32, 12595, Apr. 15					4000	54.00
Corwin Bros. & Clark, Park City, Mont., V. 32, 12595, Oct. 13	16380	81.90				
Manhattan Malt Co., Manhattan, Mt., V. 32, 12597, Jan. 12, Nov. 4			184124	1683.68		
Manhattan Malt Co., Manhattan, V. 32, 12597, Sept. 26			750000	8512.50		
Lindsay & Co., Great Falls, Mont., V. 32, 12598, Mar. 19, Sept. 10	185015	1353.06				
Lindsay & Co., Great Falls, Mont., V. 32, 12598, May 23			47670	741.63		
Spencer, Haywood Co., Spencer, Ida., V. 32, 12598, Oct. 3, Nov. 13	118485	585.16				
Spencer, Haywood Co., Spencer, Ida., V. 32, 12598, Jan. 8-14	49835	261.65				
John Maxey, Bozeman, Mont., V. 32, 12599, Oct. 29			24830	248.30		
Farm. & Merch. Ele. Co., Bozeman, Mt., V. 32, 12599, Nov. 5			109350	1093.50		
Cary Bros., Bozeman, Mont., V. 32, 12599, Nov. 28	31630	197.68				
	<u>676271</u>	<u>4060.70</u>	<u>1359874</u>	<u>14905.86</u>	<u>4000</u>	<u>54.00</u>

See the great increase in produce of hay and grain shipped in since the operation of the Washoe Smelter.

TOTAL PURCHASES OF GRAIN AND HAY BY THE McCALLUM & CLOUTIER MERC. CO., FROM OUTSIDE POINTS FOR 1905.

Conyne Cross Ex. Vol. 30. Name, Location, Vol., Page, Date—	—HAY—		—OATS—		—BARLEY—	
	Weight.	Price.	Weight.	Price.	Weight.	Price.
G. H. Powers, Belgrade, Mont., V. 32, 12585, Nov. 14.....						
John Maxey, Bozeman, Mont., V. 32, 12585, Nov. 28-15.....						
Manhattan Mill. Co., Manhattan, Mt., V. 32, 12587, Jan. 17, May 17.....						
Manhattan Mill. Co., Manhattan, Mt., V. 32, 12587, May 25.....						
Manhattan Mill. Co., Manhattan, Mont., V. 32, 12587, Feb. 24.....						
Manhattan Mill. Co., Manhattan, V. 32, 12588, May 26, Sep. 16.....						
Manhattan Mill. Co., Manhattan, V. 32, 12588, Oct. 13, Dec. 19.....						
Jefferson Val. Trading Co., Whitehall, Mont., V. 32, 12588.....	22000	88.00				
Manhattan Mill. Co., Manhattan, Mont., V. 32, 12588, Jan. 6.....						
Bozeman Mill. Co., Bozeman, Mont., V. 32, 12588, Apr. 2, Mar. 18.....						
Amos Buck Merc. Co., Stevensville, Mt., V. 32, 12588, Oct. 9-6.....	41450	196.41				
Amos Buck Merc. Co., Stevensville, V. 32, 12589, Apr. 12, July 14.....	68958	275.83				
Bozeman Mill. Co., Bozeman, V. 32, 12589, May 13, June 27.....			120800	1742.50		
Bozeman Mill. Co., Bozeman, V. 32, 12589, June 14, 27.....			60400	875.80		
Bozeman Mill. Co., Bozeman, Mont., V. 32, 12589, June 8.....	19425	101.98				
Joseph Bowden, Corvallis, Mont., V. 32, 12589, May 18, Sep. 14.....	120470	616.44				
Joseph Bowden, Corvallis, Mont., V. 32, 12590, Sep. 14, Oct. 19.....	72280	337.21				
Bozeman Mill. Co., Bozeman, V. 32, 12590, Nov. 2-29.....			120710	1327.58		
Bozeman Mill. Co., Bozeman, V. 32, 12590, Nov. 23-10.....	61040	289.95				
Appolonio, Waters & Co., Victor, Mt., V. 32, 12590, Ap. 10, Mar. 27.....	52075	232.46				
Ana. Cop. Min. Co., Anaconda, V. 32, 12590, Nov. 27.....	25848	116.31				
Ana. Cop. Min. Co., Hamilton, V. 32, 12590, July 14, Sep. 11.....	47692	238.46				
Appolonio, Waters & Co., Victor, Mont., V. 32, 12591, Aug. 23.....	63480	308.93				
Appolonio, Waters & Co., Victor, Mont., V. 32, 12591, Aug. 29.....	16770	83.85				
Ana. Cop. Min. Co., Hamilton, Mont., V. 32, 12591, Mar. 15.....	23439	111.34				
	635927	2997.17	1192969	15433.28	4000	54.40

TOTAL PURCHASES OF HAY AND GRAIN BY THE McCALLUM & CLOUTIER MERC. CO. FROM OUTSIDE POINTS TO JULY 6TH, 1906.

Conyne Cross. Ex. Vol. 32.

Name, Location, Vol., Page, Date—	—HAY—		—OATS—	
	Weight.	Price.	Weight.	Price.
John W. Beebe, Philipsburg, Mont., V. 32, 12591, July 6	36700	220.20	60000	600.00
John Maxey, Bozeman, Mont., V. 32, 12591, June 26	.....	.....	193425	2576.19
Manhattan Malt. Co., Manhattan, V. 32, 12591, Jan. 26, Jun. 6	.....	.....	.....	.....
J. D. Kennedy, Philipsburg, Mont., V. 32, 12591, June 24	Timothy	219.63	.....	.....
J. D. Kennedy, Philipsburg, Mont., V. 32, 12593, June 24	31375	.....	.....	.....
Gary Bros., Bozeman, Mont., V. 32, 12593, June 9	22280	128.81	.....	.....
Appolonio, Waters & Co., Victor, V. 32, 12593, Mar. 30, May 29	62860	440.05	.....	.....
Bozeman Mill. Co., Bozeman, V. 32, 12593, Apr. 6, June 6	221800	954.15	.....	.....
.....	.....	.....	85500	983.25
Year—	375015	1962.84	338925	4159.34

TOTALS—OUTSIDE PURCHASES.

Year—	—HAY—		—OATS—		—WHEAT—		—BARLEY—	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
1901	344837	1742.80	429762	4839.63	76600	634.00	.....	.....
1904	676271	4060.70	1359874	14905.86	4000	54.00	.....	.....
1905	636927	2997.17	1192969	15433.28	.....	.....	4000	54.00
6 months in 1906	375015	1962.84	338925	4159.34	.....	.....	.....	.....
Totals	2031060	10763.51	3321530	39338.11	80600	688.00	4000	54.00

Prices for hay and oats here quoted are prices f. o. b. loading point. We will have to add \$2.80 per ton as average freight on hay to Anaconda and about \$0.16 per hundred freight on oats.

Average prices on hay at loading point is.....\$12.02

Freight 2.80

We set in the purchase in 1901 prior to the operation of the smelter and see the exceedingly small quantities of hay and grain shipped in as compared to the amounts since the operation of the Washoe smelter.

\$14.82

PURCHASE OF DEER LODGE VALLEY PRODUCE IN 1902 BY M'CALLUM & CLOUTIER MERCANT. CO.

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES VEGETABLES	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
Chas. Bowman, V. 30, 11710, Sep. 4-11.....	18685	121.43						
C. Bowman, V. 30, 11711, Sep. 15-Dec. 2.	51180	354.93			3845	42.30		
C. Bowman, V. 30, 11711, Nov. 6-Dec. 3..							220	1.65
C. Bowman, V. 30, 11711, Dec. 17.....								
C. Bowman, V. 30, 11711, Dec. 22.....			2630	28.93				
C. Beal, V. 30, 11716, Nov. 12-14.....			6620	72.82				
C. Beal, V. 30, 11716, Dec. 4-June 5.....							2235	16.76
N. J. Beck, V. 30, 11717, Aug. 13.....								1.50
L. P. Beck, V. 30, 11717, Aug. 16-Nov. 25..							4734	52.37
Case & Bros., V. 30, 11726, July 28-Sep. 16.							6093	56.36
G. C. Cummack, V. 30, 11726, Aug. 4-26..								19.20
G. C. Cummack, V. 30, 11730, M'y 11-Jul 11								
G. C. Cummack, V. 30, 11731, Mar 22-A'g 2.							32095	23148
G. C. Cummack, V. 30, 11731, June 28.....							3400	30.60
Eli Dezourdi, V. 30, 11734, Oct. 24.....								32.77
Eli Dezourdi, V. 30, 11734, Nov. 6-Dec. 16			4675	53.21			1625	12.18
A. Deslaurius, V. 30, 11734, Sept. 18.....								
A. Deslaurius, V. 30, 11736, Sept. 15-Oct..	6579	54.31					3110	23.30
A. Desrozier, V. 30, 11739, Oct. 24.....								
A. Desrozier, V. 30, 11739, Nov. 24.....			2885	33.18			2665	19.98
G. Donisich, V. 30, 11741, Oct. 14.....								
G. Donisich, V. 30, 11741, Nov. 9-14.....			8225	94.58			3885	29.13
Straw.								
G. Donisich, V. 30, 11741, Nov. 14.....	3085	10.79						
J. Eliason, V. 30, 11742, July 16.....	2575	W 14.15						
W. T. Elliott, V. 30, 11745, Sept. 8.....					3625	43.50		
W. T. Elliott, V. 30, 11745, Sept. 8-23.....			57015	554.59				15.00
W. T. Elliott, V. 30, 11745, Nov. 21.....								
82104	553.61	76050	837.29	6470	85.80	60022	473.81	58.47

PURCHASES OF DEER LODGE VALLEY PRODUCE BY THE McCALLUM & CLOUTIER MER. CO. IN 1902.
(Continued.)

Name, V., Page, Date—	—OATS—		—WHEAT—		POTATOES		VEGETABLES	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
W. Martin, V. 30, 1175, Aug. 25-Sept. 20					6012	48.07		
Robert Nelson, V. 30, 11776, Sept. 13			3525	42.30				37.93
James Perkins, V. 30, 11779, July 15-Dec. 22								2.55
John Reese, V. 30, 11790, Aug. 12, 13								30.75
John Reese, V. 30, 11791, Aug. 14-Oct. 31								4.25
A. Rasicatt, V. 30, 11792, July 26-30								5.10
A. Rasicatt, V. 30, 11792, Aug. 2-16								
A. Rasicatt, V. 30, 11792, Sept. 20-Oct. 10					1421	11.40		
A. W. Sager, V. 30, 11800, Aug. 22	2600	32.50						
A. W. Sager, V. 30, 11800, Oct. 12-20					9380	70.26		
Chas. E. Schwend, V. 30, 11800, Oct. 10-Dec. 8			16430	194.39				
David Scott, V. 30, 11801, Nov. 12			2800	30.80				
John Schutty, V. 30, 11802, Sept. 12-Nov. 19					2320	17.35		
Gregor Schwend, V. 30, 11804, Oct. 10								
Gregor Schwend, V. 30, 11904, Oct. 19	3380	37.18						
Martin Smith, V. 30, 11805, July 9-30			4440	53.26				31.20
Martin Smith, V. 30, 11806, Sept. 13-Oct. 4			6370	76.40				
Martin Smith, V. 30, 11806, Oct. 13-Nov. 20	10810	118.90						
Peter Staton, V. 30, 11809, July-October								254.54
Walter C. Staton, V. 30, 11809, December							330	Kraut. 13.20 140.07
Ed. Trapp, V. 30, 11812, Aug. 19-Oct. 19					15090	145.18		
E. L. West, V. 30, 11814, July to Nov								340.60
	167.90	188.48	33565	417.15	34223	293.26	330	860.19

PURCHASES OF DEER LODGE VALLEY PRODUCE BY THE McCALLUM & CLOUTIER MER. CO. IN 1903.

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES VEGETABLES	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
J. Bennett, V. 30, 11705, Jan. 2,6770	77.85	.....	.....	.....	.....
C. Bowman, V. 30, 11711, May 2-Oct. 15..	16890	118.84
C. Bowman, V. 30, 11711, Sept. 5, 28,....	26640	164.71	.....	.....	.....	.....	.....	.....
C. Bowman, V. 30, 11711, Oct. 17-Nov. 6.	8422	104.15	.....	.....
C. Bowman, V. 30, 11712, Nov. 10, 14,....	6490	77.87	.....	.....
C. Bowman, V. 30, 11712, Dec. 5, 28,....	11410	80.04	.....	.....	.....	.....	.....	.....
C. Bowman, V. 30, 11712, Dec. 22,.....	550	3.75
J. S. Boone, V. 30, 11714, Dec. 15,.....
C. Beal, V. 30, 11716, June 5,.....	1087	.84
C. Beal, V. 30, 11716, Aug. 10,.....	14.82
Nels J. Beck, V. 30, 11717, May 17,.....
Nels J. Beck, V. 30, 11717, Sept. 16,....
L. P. Beck, V. 30, 11717, Oct. 7-Nov. 13..
Wm. Benninger, V. 30, 11721, Aug. 31,....
Case & Bros., V. 30, 11726, July 10-Sep. 19
Case & Bros., V. 30, 11728, Sept. 12, 23..
Case & Bros., V. 30, 11728, September
L. R. Case, V. 30, 11728, Nov. 27-July 8..
E. Dezourdi, V. 30, 11728, Jan. 13-Sept. 14	10064	110.84	.....	.....	.....	.....
E. Dezourdi, V. 30, 11728, Feb. 26,.....
E. Dezourdi, V. 30, 11728, Apr. 14-Oct. 15	660	7.92	.....	.....
A. Deslauries, V. 30, 11736, Ap. 16-Oct. 22
A. Desrozier, V. 30, 11739, Sept. 25,....	1940	10.67	.....	.....	.....	.....	.....	.....
A. Desrozier, V. 30, 11739, Oct. 2-6,....
A. Desrozier, V. 30, 11740, Oct. 7, 13,....
Joe Eliason, V. 30, 11742, Sept. 15-Oct. 23
39990	255.42	16834	188.69	15572	189.94	131974	1166.65	27.17

PURCHASES OF DEER LODGE VALLEY PRODUCE BY McCALLUM & CLOUTIER MERC. CO. IN 1903.

(Continued.)

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES		VEGETABLES	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
J. Eliason, V. 30, 11743, July 15.....	1.70
J. Eliason, V. 30, 11743, Sept. 14.....	3.20
W. T. Elliott, V. 30, 11745, May 1-Aug. 28	16495	146.17	.....	.....
W. T. Elliott, V. 30, 11745, Aug. 28-Oct. 7	5390	40.43	6320	83.55
W. T. Elliott, V. 30, 11746, Oct. 7, 13.....
W. T. Elliott, V. 30, 11746, Oct. 13.....
W. T. Elliott, V. 30, 11746, Oct. 17, 24.....	38790	452.54	.....	.....	.....	.....	2205	22.05
W. T. Elliott, V. 30, 11746, Nov. 7.....
Y. Elliott, V. 30, 11747, Apr. 17-Sept. 18..	5384	45.26	.....	.....
Y. Elliott, V. 30, 11747, Sept. 19, 23.....
M. Eyans, V. 30, 11748, May 11, 15.....
R. F. Fisher, V. 30, 11750, Dec. 3, 5.....
John Furst, V. 30, 11751, Oct. 15.....
Ben Boldy, V. 30, 11753, Dec. 31.....	11663	69.80	.....	.....	.....	.....	.....	.....	.....	.....
S. S. Henault, V. 30, 11754, Jan. 13-Apr. 3	32687	133.54	.....	.....	.....	.....	.....	.....	.....	.....
S. S. Henault, V. 30, 11754, Oct. 9, 14.....
S. S. Henault, V. 30, 11754, Nov. 14.....	2765	19.35	.....	.....	.....	.....	.....	.....	.....	.....
J. Jacobson, V. 30, 11754, Apr. 23-Oct. 13..
C. Jensen, V. 30, 11759, May 5-Oct. 15.....
Geo. Jacques, V. 30, 11760, Apr. 2-Oct. 10..
Peter Johnson, V. 30, 11761, May 14.....
Peter Johnson, V. 30, 11761, July 15.....
Peter Johnson, V. 30, 11762, July 30.....
Fred Johnson, V. 30, 11763, Sept. 18.....
	47115	222.67	45960	534.99	.....	.....	106594	850.46	.....	132.80

PURCHASES OF DEER LODGE VALLEY PRODUCE By McCALLUM & CLOUTIER MERC. CO. IN 1903.
(continued.)

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES		VEGETABLES	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
J. E. Jones, V. 30, 11765, Mar. 27-Aug. 27.	10065	82.94	.....	.....
Pat Lappin, V. 30, 11767, June 1-Nov. 31.	3490	27.05	.....	.....
Pat Lappin, V. 30, 11767, Oct. 6-Nov. 19.	1010	11.07
Pat Lappin, V. 30, 11767, Oct. 17-Nov. 19.
N. A. Liffing, V. 30, 11770, Jan. 5.	6660	47.70	.....	.....	.....	.....	.....	.....	.....	.....
N. A. Liffing, V. 30, 11770, Ap. 17-Oct. 19.
N. A. Liffing, V. 30, 11770, Oct. 20-23.	6760	77.74	.....	.....	17805	134.95	.....	2.55
John Martin, V. 30, 11772, May 25-Oct. 19.
John Martin, V. 30, 11772, Aug. 24-Oct. 21.
John Martin, V. 30, 11772, Oct-Nov. 4.	17385	137.74	.....	.....
Hugh Magone, V. 30, 11774, Oct. 14.
Robt. Nelson, V. 30, 11776, Ap. 14-Oct. 20.	8480	101.82	.....	.....	.....	.....
W. F. Norton, V. 30, 11777, Sept. 26-Nov.	36355	196.15	.....	.....	.....	.....	2500	18.75	.....	.....
Wm. Parrott, V. 30, 11777, Jan. 2, 14.	23400	122.85	.....	.....	.....	.....	13515	97.53	.....	.....
Jas. Perkins, V. 30, 11779, Jan. 2-Dec. 1.
Ed. Perkins, V. 30, 11784, Apr. 25-May 29.
Bart Para, V. 30, 11787, July 6.	2200	28.60	.....	.....	2030	15.22	.....	41.45
Bart Para, V. 30, 11787, Oct. 17.
H. J. Quinlan, V. 30, 11789, Oct. 23.	2250	16.87	.....	.....
John Reese, V. 30, 11791, Oct. 13, 14.	1165	8.70	.....	.....
A. Rasticatt, V. 30, 11792, May 16-Oct. 13.	4905	36.78	.....	.....
A. Rasticatt, V. 30, 11792, Oct. 21.	3075	24.18
C. E. Schwend, V. 30, 11800, Feb. 10, 20.	27680	145.31	.....	.....	.....	.....	.....	.....	Hot House.	.....
David Scott, V. 30, 11801, April-May 9.
David Scott, V. 30, 11801, Oct. 2, 5.	7150	89.37	.....	.....	4425	30.67	.....	.....
David Scott, V. 30, 11801, Oct. 3, 14.	7715	96.44	.....	.....	.....	.....
.....	94075	512.01	16110	195.71	161.95	208.26	795.35	607.20	.....	117.67

PURCHASES OF DEER LODGE VALLEY PRODUCE BY McCALLUM & CLOUTIER MERC. CO. IN 1903.

(Continued.)

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES		VEGETABLES	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
John Schutty, V. 30, 11802, Aug. 22.....	8.80	8.80	.....	.....
John Schutty, V. 30, 11802, Sept. 11.....	2.35
Schwend & Bennett, V. 30, 11804, Dec. 7.	41.44	.....	.....	.....	.....	.....	.....
Schwend & Bennett, V. 30, 11804, Dec. 7.	3085	35.47	.....	.....	.....	.....	.....	.....
G. Schwend & Sons, V. 30, 11805, Nov. 4.	12280	153.50	.....	.....	.....	.....
M. Smith, V. 30, 11806, Apr. 30-Oct. 9.....	11680	87.58	.....	.....
M. Smith, V. 30, 11806, June 9, 29.....	4.30
M. Strickland, V. 30, 11808, S. 14-Oct. 14.	14084	107.74	.....	.....
P. Staton, V. 30, 11809, July 19-October.	178.51
W. C. Staton, V. 30, 11810, Jan. 12-Oct....	334.42
W. C. Staton, V. 30, 11810, April 29.....	83475	500.71	.....	.....	.....	.....	.....	.....	.....	.....
W. C. Staton, V. 30, 11811, Nov., Dec....	20.04
	83475	500.71	3085	35.47	16395	194.94	26644	284.12	.....	539.62

PURCHASES OF DEER LODGE VALLEY PRODUCE BY McCALLUM & CLOUTIER MERC. CO. IN 1904.

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES VEGETABLES		
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	
J. Bennett, V. 30, 11705, March 18, 30...			17395	217.43			18222	137.76	
J. Bennett, V. 30, 11705, Feb. 13-Mar. 30..									
J. Bennett, V. 30, 11705, April 4.....					1710	24.77	7405	68.15	
G. Backlund, V. 30, 11709, Mar. 11-Oct. 14									
C. Bowman, V. 30, 11712, Jan. 2-Dec. 24..	34050	241.70							
C. Bowman, V. 30, 11712, Mar. 30-Oct. 15							28635	229.10	
C. Bowman, V. 30, 11712, Oct. 28-Nov. 12.					4280	63.45			
J. S. Boone, V. 30, March 15.....							10825	80.93	
J. S. Boone, V. 30, 11714, March 17, 21..							14820	112.05	
J. S. Boone, V. 30, 11715, Mar. 22-Sept. 21							15070	122.18	
J. S. Boone, V. 30, 11715, Sept. 27-Oct. 21.					10445	146.67			
C. Beal, V. 30, 11716, March 17-Sept. 7....							25253	200.04	
L. P. Beck, V. 30, 11720, Oct. 21.....							4500	33.75	
W. Benninger, V. 30, 11721, Jan. 6, 31..									
W. Benninger, V. 30, 11721, Feb. 4-Dec. 1.									
A. M. Bennett, V. 30, 11722, Aug. 11, 13..							5940	59.40	
Alfalfa.									
A. M. Bennett, V. 30, 11722, N. 22-Dec. 3.	5250	27.52							
O. J. Bell, V. 30, 11724, April 9, 27.....							12179	119.20	
John Bohn, V. 30, 11725, Sept. 26, 19....					8930	92.47			
L. R. Case, V. 30, 11728, Apr. 27-July 5..							16736	176.60	
L. R. Case, V. 30, 11728, April 17.....								44.83	
L. R. Case, V. 30, 11728, Sept. 19, 23....					14200	199.54			
L. R. Case, V. 30, 11729, Oct. 8.....								3.40	
L. R. Case, V. 30, 11729, Oct. 13, 21....							15970	159.70	
W. H. Crash, V. 30, 11733, Nov. 7.....							2161	15.90	
39300	279.22	17395	217.43	39565	526.90	178016	1514.76	1115	127.54

PURCHASES OF DEER LODGE VALLEY PRODUCE BY McCALLUM & CLOUTIER MERC. CO. IN 1904.
(Continued.)

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES. VEGETABLES		
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	
A. Derozier, V. 30, 11740, Feb. 8, 29.....	13580	60.59							
A. Derozier, V. 30, 11740, Sept. 1-Oct. 19.					2950	44.25	12660	134.24	
A. Desrozier, V. 30, 11740, Oct. 29.....									
Alfalfa.									
A. Derozier, V. 30, 11740, Nov. 18-Dec. 7.	11450	61.33							
Donicich, V. 30, 11741, March 4.....							30565	229.54	
Donicich, V. 30, 11741, Nov. 7-Feb. 4....	2575	16.03							
Donicich, V. 30, 11741, April 21.....									
Joe Eliason, V. 30, 11742, April 16-Oct. 20							35575	286.48	
Jacob Eliason, V. 30, 11743.....							11366	90.92	
Jacob Eliason, V. 30, 11743, July 13.....								3.46	
John Eliason, V. 30, 11744, Oct. 14, 29....							9000	72.70	
John Eliason, V. 30, 11744, Oct. 21.....								3.60	
Isaac Eliason, V. 30, 11745, Nov. 4.....							1190	8.92	
W. T. Elliott, V. 30, 11746, Aug. 14-Oct. 11								7173	
W. T. Elliott, V. 30, 11746, Oct. 11.....			1245	16.80				82.23	
Y. Elliott, V. 30, 11747, May 17-Sept. 6....							5041	51.29	
Y. Elliott, V. 30, 11747, Sept. 16.....					4050	60.75			
Y. Elliott, V. 30, 11747, Sept. 6, 16.....			4560	64.95					
Y. Elliott, V. 30, 11748, Sept. 17, 20....			18855	241.53	4260	63.90			
Morgan Evans, V. 30, 11748, April 6.....							1765	22.06	
Morgan Evans, V. 30, 11748, June 28.....					3825	59.28			
R. F. Fisher, V. 30, 11750, Mar. 17-Sep. 29							17615	140.60	
R. F. Fisher, V. 30, 11750, Mar. 25-Jun 13								7.72	
R. F. Fisher, V. 30, 11750, Sept. 19, 26....					12950	179.22			
27405	137.95	24660	323.55	28035	407.40	124771	1036.75	7173	104.87

PURCHASES OF DEER LODGE VALLEY PRODUCE BY McCALLUM & CLOUTIER MERC. CO. IN 1904.

* (Continued.)

Name, V., Page, Date—	—HAY—		—OATS—		—POTATOES—		—VEG.'S—		BUT'R & EGGS	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
R. F. Fisher, V. 30, 11750, Sept. 20	1480	19.24								
R. F. Fisher, V. 30, 11750, Nov. 22	22805	154.33								
Alfalfa.										
R. F. Fisher, V. 30, 11750, Nov. 22	5440	29.92	3000	22.50						
John Furst, V. 30, 11751, Feb. 19										
Wild Hay.										
Ben Goldy, V. 30, 11753, Oct. 14-Nov. 12.	24965	136.50								
S. S. Henault, V. 30, 11754, March 15.	22425	123.33								
S. S. Henault, V. 30, 11754, Oct. 7, 17.			12480	123.31						
S. S. Henault, V. 30, 11754, Oct. 17							1020	7.65		
J. Jacobson, V. 30, 11757, Mar. 22-Sept. 27					7388	79.90			4170	43.35
J. Jacobson, V. 30, 11757, Aug. 30-Sept. 12					212	2.12				
Chris Jensen, V. 30, 11759, Sept. 13					16515	151.19				
Geo. Jacques, V. 30, 11760, Mar. 23-Sept.										
Geo. Jacques, V. 30, 11760, June 2-July 1.			13066	182.91						
Peter Johnson, V. 30, 11762, Oct. 26					3160	28.10				
F. Johnson, V. 30, 11763, Aug. 12-Dec. 19.					9258	110.39				
Alfalfa.										
Geo. Johnson, V. 30, 11764, Nov. 30	27900	146.48								
Geo. Johnson, V. 30, 11764									120.00	
Joe Jolly, V. 30, 11766, Mar. 12-Nov. 22					2260	16.95				
Straw.										
Joe Jolly, V. 30, 11766, Dec. 23		22.50								
Pat Lappin, V. 30, 11767, Jan. 12-Dec. 16.								785	13.53	
Pat Lappin, V. 30, 11767, April 4			2300	18.40						
L. Larrbie, V. 30, 11770, Sept. 26-Oct. 7	9450	61.30								
N. A. Liffing, V. 30, 11770, March 19			27520	206.40						
Mike Lowery, V. 30, 11771, March 24	14000	70.00								
Straw.										
Mike Lowery, V. 30, 11771, March 24	7670	28.76								
John Martin, V. 30, 11772, May 11-Sep. 19.			21304	262.23						
	210655	773.12	14546	202.15	103397	1021.49	5975	64.53	120.00	

(Continued.)

Name, V., Page, Date—	—HAY—		—OATS—		POTATOES		VEGETABLES		BUT'R EGGS	
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.
W. H. Crash, V. 30, 11733, Mar. 10.....							1660	14.95		
Eli Dezourdi, V. 30, 11734, May 1, '05..	1200	14.90						Hoth' use		
Mr. Day, V. 30, 11739, May 1, '06.....								750.00		
Alfalfa										
A. Desrozier, V. 30, 11740, Mar. 24, Oct. 28	11585	76.15								
Wheat										
A. Desrozier, V. 30, 11740, Sept. 23.....			330	4.45						
George Donich, V. 30, 11741.....	4075	22.41					525	5.98		
Joe Eliason, V. 30, 11742, Feb 15, Mar 16					2195	20.25				
Jacob Eliason, V. 30, 11743, Apr. 11, 15..							3290	31.41		
Jacob Eliason, V. 30, 11743, May 1, '05,									167.50	167.50
May 1, '06.....										
Jno. Eliason, V. 30, 11744, Apr 8, May 5										5.55
John Eliason, V. 30, 11744, Nov. 1.....					2480	18.60				
Isaac Eliason, V. 30, 11745, May 8.....					3850	34.65				
Isaac Eliason, V. 30, 11745, June 2.....										1.40
Isaac Eliason, V. 30, 11745, June 2, '05,										
to June 1, '06.....										
W. T. Elliott, V. 30, 11746, Apr 4, May 20							27495	261.17		37.50
W. T. Elliott, V. 30, 11746, Sept. 12.....			2900	40.60						
W. T. Elliott, V. 30, 11747, Sept. 14.....			2460	36.75						
W. T. Elliott, V. 30, 11747, May 16.....					2660	26.60				62.00
Yancey Elliott, V. 30, 11748, June 21....							3245	19.45		
Yancey Elliott, V. 30, 11748, Oct. 10.....										
Wheat										
Morgan Evans, V. 30, 11748, Jan. 7.....	100	1.00								
Morgan Evans, V. 30, 11748, May 1, '05,										
to June 1, '06.....										
W. J. Evans, V. 30, 11749, May 1, '05, to										62.50
June 1, '06.....										25.00
Wm. Evans, V. 30, 11749, Sept. 23.....			2365	28.38						
Wheat										
Wm. Evans, V. 30, 11749, Dec. 21.....							2865	37.25		
Alfalfa										
R. F. Fisher, V. 30, 11750, Apr 29, Dec 13	17040	82.20					430	1.00		
R. F. Fisher, V. 30, 11750, Jun 8, Sep 29										5.77
Straw										
R. F. Fisher, V. 30, 11750, Sep. 20, 15....	7380	27.63								
41280	223.29	8055	110.18	46925	28072	5475	942.81	292.50	354.50	

PURCHASES OF DEER LODGE VALLEY PRODUCE BY M'CALLUM & CLOUTIER MERCANT. CO. IN 1905.

(Continued.)

Name, V., Page, Date—	—HAY— Weight. Price.	—OATS— Weight. Price.	—WHEAT— Weight. Price.	POTATOES Weight. Price.	VEGETABLES Weight. Price.	BUT'R. Price.	EGGS.
J. E. Jones, V. 30, 11765, Aug. 12-Sept. 22				3060	26.27		205.00
J. E. Jones, V. 30, 11765, Aug. 12-Sept. 22							
C. B. Jones, V. 30, 11765, May 31-Aug. 5			7685				
C. B. Jones, V. 30, 11766, Sept. 14			2790			30.00	30.00
C. B. Jones, V. 30, 11766, Sept. 14							
J. Jolley, V. 30, 11766, Jan. 4	3150	11.80					
J. Jolley, V. 30, 11766, May 5							
J. Jolley, V. 30, 11766, May 16		1275	19.75				
Pat Lappin, V. 30, 11769, March 28-30				2657	28.72		
Pat Lappin, V. 30, 11769, June 1-Oct. 14						37.67	
N. A. Liffing, V. 30, 11770, Oct. 1							
N. A. Liffing, V. 30, 11770, Oct. 1				835	6.25		
N. A. Liffing, V. 30, 11770, Oct. 1						3.25	
N. A. Liffing, V. 30, 11770, Oct. 1					470	3.50	
N. A. Liffing, V. 30, 11770, Nov. 13-Dec. 9	13470	49.50					
M. Lowery, V. 30, 11770, July 5	3250	12.56					
M. Lowery, V. 30, 11770, Sept. 7-Nov. 4				10100	75.73		
John Martin, V. 30, 11773, April 5-7							
John Martin, V. 30, 11773, April 5-7	Straw.						
John Martin, V. 30, 11773, May 27	4040	15.16					
John Martin, V. 30, 11773, May 27							
John Martin, V. 30, 11773, Aug. 25-Sept. 23				5870	58.70		
H. Magone, V. 30, 11773, Mar. 6-April 25						17.40	
J. W. Mitchell, V. 30, 11776, Oct. 30				5075	45.67		
Robt. Nelson, V. 30, 11776, Dec. 7				1700	12.75		
Jas. Perkins, V. 30, 11780, Jan. 3			3540		46.02		
Jas. Perkins, V. 30, 11781, Jan. 24-Aug. 8						8.37	
Jas. Perkins, V. 30, 11782, Aug. 15-Oct. 3						107.65	
Jas. Perkins, V. 30, 11783, Oct. 5-Dec. 12						70.49	
Jas. Perkins, V. 30, 11783, Oct. 5-Dec. 12						66.05	
23910	89.02	1275	1975	24660	362.89	30.00	235.00
				29297	254.09	313.38	

PURCHASES OF DEER LODGE VALLEY PRODUCE BY McCALLUM & CLOUTIER MERCANT. CO. IN 1905.
(Continued.)

Name, V., Page, Date—	—HAY— Weight. Price.	—OATS— Weight. Price.	—WHEAT— Weight. Price.	POTATOES Weight. Price.	VEGETABLES Weight. Price.	BUT'R. EGGS.						
E. Perkins, V. 30, 11784, Aug. 22-Sept. 26..	.....	.....	.....	15340	132.50	.....					
A. Perkins, V. 30, 11785, June 9-Aug. 15..	.....	.....	.....	1575	9.45	.....					
A. Perkins, V. 30, 11785, Sept. 15-Oct. 7..	.....	.....	.....	2940	22.05	50.00			
A. Perkins, V. 30, 11785, Sept. 15-Oct. 7..	.....	.....	.....	2485	22.36	.....					
J. Perkins, V. 30, 11787, Sept. 18-Nov. 25..	.....	.....	.....	.....	.....	.....
Bart Para, V. 30, 11787, May 1.....	.....	.....	.....	.....	.....	.....
Bart Para, V. 30, 11787, May 1.....	.....	.....	.....	.....	.....	.....
A. Peterson, V. 30, 11788, June 9-Oct. 13..	.....	.....	.....	.....	.....	.....
A. F. Peterson, V. 30, 11788.....	.....	.....	.....	4200	31.50	.....					
Mrs. M. Quinlan, V. 30, 11788, Nov. 8.....	25783	112.99	.....	7165	51.69	509.23					
H. J. Quinlan, V. 30, May 5-Dec. 9.....	53160	295.17	.....	.....	.....	.....		
John Quinlan, V. 30, 11789.....	31785	117.14	.....	.....	.....	.....		
J. F. Ryan, V. 30, 11792, Oct. 26.....	.....	.....	.....	.....	.....	.....
J. F. Ryan, V. 30, 11792, Aug. 2.....	.....	.....	.....	1750	15.75	.....					
T. Reask, V. 30, 11793, May 10.....	.....	.....	.....	.....	.....	.....
Alfalfa.....	.....	.....	.....	.....	.....	.....
Wm. Parrott, V. 30, 11794, Oct. 26.....	56825	285.54	.....	.....	.....	.....		
A. W. Sager, V. 30, 11800, Aug. 17-Oct. 2..	.....	.....	.....	2850	26.43	.....					
Schwend Bros., V. 30, 11801, Nov. 17.....	.....	.....	2415	31.40	.....	.....				
David Scott, V. 30, 11802, May 31.....	.....	.....	.....	1165	10.48	.....					
J. Schutt, V. 30, 11804, Sept. 19.....	.....	.....	.....	.....	.....	.....
J. Schutt, V. 30, 11804, Sept. 19-Oct. 8..	.....	.....	.....	1970	22.23	.....					
J. Schutt, V. 30, 11804, Oct. 6-12.....	.....	.....	.....	2900	21.75	.....					
Schwend Bros., V. 30, 11805, Feb. 15.....	6170	30.85	.....	.....	.....	4.92			
Martin Smith, V. 30, 11806, May 23-Sept. 1.	.....	.....	.....	10510	91.56	.....					
Martin Smith, V. 30, 11806, Sept. 16.....	.....	.....	4410	59.50	.....	.....				
Martin Smith, V. 30, 11807, Oct. 2-3.....	.....	7145	85.74	.....	.....	.....			
Alfalfa.....	.....	.....	.....	.....	.....	.....
Martin Smith, V. 30, 11807, Oct. 6.....	3070	16.90	.....	.....	.....	.....		
Martin Smith, V. 30, 11807, Oct. 6.....	.....	.....	3745	40.55	.....	.....				
Martin Smith, V. 30, 11807, Oct. 19, 27..	.....	.....	.....	15325	102.42	.....					
.....	176793	858.59	7145	85.74	10670	131.45	68205	537.94	9745	60.05	55923

PURCHASES OF DEER LODGE VALLEY PRODUCE BY M'CALLUM & CLOUTIER MERCANT. CO. IN 1906.

Name, V., Page, Date—	—HAY—		—OATS—		—WHEAT—		POTATOES VEGETABLE BUT'R.		EGGS.
	Weight.	Price.	Weight.	Price.	Weight.	Price.	Weight.	Price.	
J. Bennett, V. 30, 11706, Feb. 26-May 18...	26805	100.50					7230	72.30	
G. Backlund, V. 30, 11710, April 4...			49547	310.43					
C. Bowman, V. 30, 11713, July 5-May 19...			11340	148.67					
A. M. Bennett, V. 30, 11722, Jan. 6, 26...								13.34	
John Bohn, V. 30, 11725, April 7, 28...									
O. V. Cable, V. 30, 11732, Jan. 18...	2775	18.05					115	1.15	
A. Derozier, V. 30, 11740, Jan. 30...									
	Alfalfa.								
A. Desrozier, V. 30, 11740, Feb. 12-April 7.	12215	67.20							
J. Eliason, V. 30, 11744, March 22, 24...							5855	58.55	
J. Eliason, V. 30, 11744, March 22, 24...									410.00
Y. Elliott, V. 30, 11748, April 14, 30...							20305	203.05	
Y. Elliott, V. 30, 11748...									40.00
Wm. Evans, V. 30, 11749, Jan. 13...					2250	33.15			
Wm. Evans, V. 30, 11749, Jan. 24...			2450	34.30					
Wm. Evans, V. 30, 11749, April 21...							315	2.36	
Wm. Evans, V. 30, 11749, April 21...									12.50
	Alfalfa.								
R. F. Fisher, V. 30, 11750, Jan. 11...	2075	10.38							
R. F. Fisher, V. 30, 11750, April 9, 13...							9175	91.75	
R. F. Fisher, V. 30, 11750, April 9, 13...									5.00
J. W. Hammer, V. 30, 11756, April 11, 28...							5195	51.95	
J. W. Hammer, V. 30, 11756, April 11, 28...									33.00
H. Ho..man, V. 30, 11756, Jan. 17, Feb...							7585	75.85	
H. Ho..man, V. 30, 11756, Jan. 17, Feb...									450.00
Geo. Jacques, V. 30, 11761, Jan. 27-April 28							3625	36.25	
Geo. Jacques, V. 30, 11761, Jan...									15.00
Pat Lappin, V. 30, 11769, May 16...	2705	17.60							
	46575	213.75	63337	502.40			59085	590.85	
								16.70	965.50

TOTAL PURCHASES BY M. T. POLICH FROM DEER LODGE VALLEY.

Name, Vol., Page, Date—	—HAY—		—POTATOES—		—VEGETABLES—	
	Weight.	Price.	Weight.	Price.	Weight.	Price.
Grisovitch, V. 26, 10057, 1903-4.....
Grisovitch, V. 26, 10057, 1903.....
W. C. Staton's Brothers, V. 26, 10058, 1903.....
Pat Lappin, V. 26, 10060, 1903.....
Geo. Danicich, V. 26, 10060, 1903.....
W. C. Staton, V. 26, 10063, 1905.....
W. C. Staton, V. 26, 10072.....
W. C. Staton, V. 26, 10081.....
"States that he could not get sufficient vegetables from the Deer Lodge valley; had to send to Missoula and other places in 1904."						
Oliver, Jim., V. 26, 10073, 1906.....
Fisher, Bob., V. 26, 10074, 1906.....
W. C. Staton, V. 26, 10079, 1906.....
W. C. Staton, V. 26, 10080, 1904.....

Bought vegetab. from Butte & Missoula.

Bought 65c worth vegetables in spring.
Bought \$30 worth of vegetab. for the year

VALLEY.

—VEGETABLES—

—POTATOES—

TOTAL PURCHASES BY GABRIEL TERKLA FROM DEER LODGE VALLEY.

Name, Vol., Page, Date—	—HAY—		—POTATOES—	
	Weight.	Price.	Weight.	Price.
Staffanson, Eph., V. 26, 10044, 1905.....
Danicich, Geo., V. 26, 10045, 1905 Fall.....
Allen, V. 26, 10047.....
Danicich, Geo., V. 26, 10048.....

—VEGETABLES—

—POTATOES—

Bought 75c, 80c, 85c

Bought 13.00 ton

DOBBINS (V. 26, 10266) :

“A. I did all the buying, as the steward usually does in all hotels.

Q. During the past two years have you purchased any part of your vegetables, particularly your green vegetables from the Valley, the farmers and gardeners in the Deer Lodge Valley?

A. Yes, sir, I purchased all *that I needed, that I could get from them.*

Q. And at the same time have you purchased any from outside points that were shipped in there?

A. Yes, we have to buy more than half of what we need from the outside; I presume more than half; that is an approximate statement.

Q. Can you give a detailed statement of any of the persons in the Valley from whom you have purchased vegetables, and the vegetables purchased, and the prices paid in those two years?

A. Yes, sir, I have my books there with me and I also have an abstract in my pocket.”

DOBBINS (Vol. 26).

Name, Page and Date.	—POTATOES—		—VEG.—	
	Weight.	Price.	Price.	
Salomon Dahood, V. 26, 10268, Sept. 9.....	.....	.....	\$ 2.40	
Salomon Dahood, V. 26, 10269, Sept. 12.....	.....	5.00	1.23	
Fred Jacobson, V. 26, 10269, Sept. 21.....	500	.....	.....
Staton Bros., V. 26, 10273, Jan. 19.....	.....	.....	2.35	
Staton Bros., Vol. 26, 10272, Jan. 19.....	50	.35	.....
Staton Bros., V. 26, 10281, Jan. 29-April 18.....	.....	.....	20.35	
Staton Bros., V. 26, 10281, Jan. 29-April 18.....	2009	11.64	.....
Joe Rogers, V. 26, 10281, Jan. 10-June 21.....	.....	.....	5.15	
Joe Rogers, V. 26, 10282, June 25-Aug. 31.....	.....	.....	15.85	
Joe Rogers, V. 26, 10282, Aug. 31.....	1130	15.80	.....
Fred Jacobson, V. 26, 10269, Aug. 25-Nov. 28.....	14748	110.51	.....
J. A. Barry, V. 26, 10269, Feb. 18.....	.....	.....	4.30	
Fred Jacobson, V. 26, 10269, Sept. 7.....	.....	.....	1.85	
J. Jones, V. 26, 10270, Aug. 14-Sept. 25.....	.....	.....	6.48	
J. Jones, V. 26, 10270, Sept. 25.....	125	1.25	.....
J. Ross, V. 26, 10270, Nov. 10.....	.....	.....	2.50	

DOBBINS (Vol. 26).

(Continued.)

		—POTATOES—		—VEG.—	
Name, Page and Date.		Weight.	Price.	Price.	
Kung Sam, V. 26, 10270, Nov. 10, 16				6.25	
Kung Sam, V. 26, 10271, Nov. 17, 28				2.00	
Mr. Fleming, V. 26, 10271, Dec. 11				2.60	
Albert Walker, V. 26, 10271, June 6				10.10	
Albert Walker, V. 26, 10272, June 13-July 10				11.35	
Carlton, V. 26, 10273, Sept. 2				.20	
A. Rosick, V. 26, 10273, July 16-Aug. 27				2.20	
C. Rask, V. 26, 10282, Aug. 26				.30	
C. Rask, V. 26, 10283, Aug. 29-Sept. 14				18.99	
C. Rask, V. 26, Sept. 16-Oct. 28				31.47	
C. Rask, V. 26, 10286, Nov. 2-Aug. 10				35.13	
C. Rask, V. 26, 10287, Aug. 12, 17				22.82	
C. Rask, V. 26, 10288, Aug. 24, 25				2.87	
James Kirkpatrick, V. 26, 10271, Jan. 27				6.39	
Ed Trapp, V. 26, 10271, Feb. 14, 24		9920	102.16		

DOBBINS (V. 26).

Year.	—POTATOES—		—VEG.—
	Weight.	Price.	Price.
1904	3689	\$32.79	\$ 47.31
1905	14873	112.76	161.33
1906	9920	102.16	6.39
Total	28482	\$247.71	\$215.03

Mr. Dobbin's testimony shows that the largest hotel in Anaconda, "The Montana," referring to defendant, purchases less than 40 cents a day for a *period of three years*, which purchases of Mr. Dobbins, *divided up amongst the one hundred and seven ranches of the Deer Lodge Valley, will show purchases of less than one-half cent a day for each ranch for every day in the year, or a total of about \$1.20 a year for each ranch in the Valley, or not enough money to pay for one day's labor in twelve months, or one day's board at his hotel.*

J. P. THOMAS, Deft. Wit. (V. 23, 8789) :

Q. Do you recall how much you bought from Mr. Thomas (Valley hay) ?

A. Something like from 25 to 35 tons, somewhere along there.

Q. What year?

A. 1903, *I think*. Year smelter closed.

Q. 1903?

A. Yes, 1903.

Q. And what time of the year?

A. It was in the latter part of November, *I think*.

Q. In the fall?

A. Yes, sir, in the fall.

Q. What prices did you pay Mr. Thomas, do you recall?

A. Yes; I baled it myself; *paid five dollars for it in the stack.*

Q. You paid \$5 and baled it yourself?

A. I baled it and hauled it for that.

Q. What did you do with that hay?

A. Sold it there in town.

Q. Did you have any difficulty in disposing of it?

A. *No great difficulty, but they had a great prejudice against Valley hay, a great many of them; most of them did; I don't know but what the most of that twenty-five or thirty tons we fed to our own horses on that account. If we had any other hay they would not take Valley hay.*

Q. Do you know how that arose?

A. How it arose?

Q. Yes, sir.

A. *Well, they claimed smoke was injuring the hay. (V. 23, 8790.)*

Q. Who claimed that?

A. *Well, anybody that would be talking about hay would say, "if this is Valley hay, it is hurt by smoke."*

Q. Do you know if the farmers themselves were claiming it that raised it?

A. *Yes; I heard farmers claiming it that raised it and men who were not farmers; wood-haulers came in and would say, "if this is Valley hay we don't want it; it is 'smoked.'" (V. 23, 8790.)*

(NOTE.—The Court will see by the above testimony of Mr. Thomas that the hay he alludes to is the crop of 1903, or the crop cut the year the smelter closed on July 1st, and the *only record of any Valley hay he ever handled while in business was the 1903 crop*, showing he never fed or handled in his business any hay raised or cut under what might be designated truly smoke conditions, and as his testimony shows above, that he could not sell the 1903 hay to his customers, only could sell this Valley hay, *and people would only buy it when they could get nothing else*, and still defendants' counsel argue to this Court good demand and good prices for Deer Lodge Valley hay.)

GEORGE BOYLES, Deft's Wit.

From October 28, 1905, to May 18, 1906.

	—HAY—		—OATS—	
Name, Vol. and Page.	Weight.	Price.	Weight.	Price.
Pat Sweeney, Staton Ranch, V. 23, 9126.....	21 ton	\$206..85		
Jacob Jacobson, V. 23, 9128.....	5 ton	50..00		
Schwend Bros., V. 23, 9130.....	30 ton	300..00		
Jolly, V. 23, 9130.....	3 ton	30..00		
Relative of Schwend, V. 23, 9143.....	2 ton	20..00		
Schwend Boys, V. 23, 9143.....			2142	300..00
			2142	300..00
Divide, V. 23, 9142.....	61 ton	506..85		
Red Lodge, V. 23, 9142.....	30 ton			
J. B. Gnose, Bitter Root Hay, V. 23, 9142.....	20 ton			
	30 ton			
	80 ton			

61 ton in the Valley.

80 ton outside of the Valley.

Showing very little hay handled by the hay dealer from anywhere.

Mr. Boyles, defendants' witness, was in the hay and grain business in Anaconda for a short time, from October 28, 1905, to May 18, 1906, during which period he bought 61 tons of hay from the Valley and shipped in 84 tons. Average price paid for Valley hay about \$10 a ton, and only purchased \$300 worth of grain from the Valley in the entire period.

The testimony of Mr. Polich and Mr. Terkla, merchants of Anaconda, show their purchases to amount to practically nothing.

The testimony of Mr. Gnose and Mr. Hurley, managers of the Copper City Commercial Company, shows they purchased some produce from the Valley, but very little, nothing definite, and when their books were asked for, so that the actual purchase of produce could be shown, and from whom bought, defendants' counsel, rather than to produce the books, allowed the amount of their purchase to remain a blank in this record. Doubtless the purchase of these merchants would have shown about the same conditions as the ones who did testify, and that is purchases that amount to practically nothing.

Another very significant fact is the amount of beef cattle bought in the Deer Lodge Valley by J. Wenger and Wm. Montgomery. The record shows these men are the principal butchers doing business in Anaconda, and almost all the cattle slaughtered for use in Anaconda is slaughtered at their abattoir, and the record of their testimony shows that both of these men bought in the entire Deer Lodge Valley 1341 cattle, 15,250 sheep and 37 hogs in the years 1903-4-5-6. This number also includes cattle bought from Quinlan Brothers on Rock Creek and of E. J. Evans and

Wm. Evans, French Gulch cattle. The total amount of cattle and sheep *bought from men living in the Deer Lodge Valley who keep their stock in the Valley and belong to the Farmers' Association, for the years 1903-4-5-6*, is as follows: Cows, 260; calves, 109; steers, 81; sheep and lambs, 687; hogs, ———.

Bought from members of the Farmers' Association, stock not kept in Deer Lodge Valley: Cows, 69; calves, 19; steers, 183.

The 687 sheep and lambs bought of Peter Johnson and George Johnson, the record shows, are ranged on the east side of Deer Lodge Valley. The remainder, or 14,659 head, bought by Montgomery, are ranged entirely out of the Smoke Zone. Of the cattle bought, only 450 (of which 109 were calves), leaving 891, bought from men living in the Valley and not belonging to the Farmers' Association. When we speak of the Valley in connection with Montgomery and Wengel's stock purchase, the Court will see by the record it included the territory from Gold Creek, about twenty miles north of the City of Deer Lodge, to Silver Bow Canyon, on the south.

One very startling fact, as shown by the purchase of stock by these men, is the decrease in the number purchased each year. In 1903-4, or year 1903 and spring of 1904, they purchased from members of the Farmers' Association stock which had been kept in the Valley 356 head of cattle. In 1904-5 only 62 head; in 1906, 34 head, 13 of which were calves. And still in the face of these facts, as shown by defendants' own witnesses, the defense claims the farmers and stock men are conducting their business as formerly. The testimony of these men who buy fat

cattle for slaughter show they have only bought in 1905 and 1906 about 100 head of cattle in two years from Deer Lodge Valley Smoke Zone, about 50 per cent. of which are calves; showing these men have not been able to buy one cow brute a year on an average from the farms of the smoke infected portion of the Deer Lodge Valley.

The Court will see by the tables attached to this Brief, which give all the purchases made by these men, that about one-half of the cattle purchased by these men were purchased from Mr. Bielenberg in the winter of 1903 and spring of 1904. By including Elliott's and Quinlan's for the same period you get three-fourths of the cattle that has been purchased in the smoke infected portion of the Valley since the erection of the big stack from members of the Farmers' Association.

Montgomery paid out \$45,813.65 for sheep, but only bought *three sheep that were kept in the smoke zone*. Paid out \$30,426.90 for cattle, but only paid out to members of the Farmers' Association for cattle belonging and kept in the Valley the sum of \$7,943.60 since the erection of the big stack in 1903, most of which was paid for stock in the winter of 1903 and spring of 1904, when the stock were fed the hay cut the year the smelter was closed.

This \$7,943.60 is the price paid for 406 head of cattle of all kinds, bought from members of the Farmers' Association, and Valley stock, or \$19.55 a head.

Mr. Montgomery paid to Peter Valiton in 1903 and 1904 the sum of \$11,210 for 236 steers, or paid to Mr. Valiton \$3,267.60 more in one year for beef than he has paid out to all the members of the Farmers' Association for beef cattle of all classes in four years. We exclude the amount

paid to Quinlan Brothers, Evans and others of the Farmers' Association who sold stock to Montgomery, stock that was kept entirely away from the Valley, or probably only brought in and fed hay a short time, as in the case of Quinlan's and Evans.

The purchase of the steers from Mr. Valiton clearly shows that stock does well and is profitable in the parts of the Deer Lodge Valley not affected by smelter fumes. The sheep purchase tells the same story. Out of the \$74,621.20 paid for stock to men living in and tributary to the Deer Lodge Valley, the 107 men belonging to the Farmers' Association received about 10 *per cent. of it, while they own at least one-half of the improved lands of all the territory covered by Montgomery's purchases.*

The Court will notice that very, very few cattle have been purchased by these men in the smoke affected portions of the Valley, and clearly confirms the statements of plaintiff's witnesses that the stock industry of the Valley is destroyed. Think of it, only 450 head of beef cows, steers, calves, purchased in 1903-4-5-6 from 107 men who own 55,000 acres of land, or only able to purchase one head of beef stock at an average value of \$19.55, or *a return in beef of one head of beef for each 500 acres.*

Multiply 55,000 by 4, the number of years over which Montgomery and Wenger's purchases extend, equal 220,000 for one year. Divide 220,000 by 450, the total number of all classes of beef cattle (cows, calves and steers), and we have the proportion as of one head of cattle to the 488 acres of land.

Mr. Montgomery's figures as a whole may look like the stock business is fairly good in the Deer Lodge Valley.

and so it is where the stock is not affected with the smelter fumes, but separated and classified, it clearly shows, first, no stock to speak of fit for beef in the Smoke Zone. Those there are of an inferior grade, as is shown by his average price per head, \$19.55, for all cattle bought of members of the Farmers' Association kept in the Smoke Zone.

PURCHASED BY MONTGOMERY & WENGER IN 1903-1904.

Name.	Page.	—CATTLE—		—SHEEP—		—HOGS—	
		Number.	Price.	Number.	Price.	Number	Price.
Charles Bowman.....	12260, V. 31	6 cows	\$128.00	.....	.....	.....	.....
Charles Bowman.....	12261, V. 31	1 steer	30.00	.....	.....	.....	.....
Charles Bowman.....	12261, V. 31	7 calves	63.00	.....	.....	.....	.....
D. G. Brownell.....	12262, V. 31	1 steer	45.00	.....	.....	.....	.....
D. G. Brownell.....	12262, V. 31	1 steer	35.00	.....	.....	.....	.....
D. G. Brownell.....	12262, V. 31	1 steer	30.00	.....	.....	.....	.....
Peter Valiton.....	12265, V. 31	236 steers	11210.00	.....	.....	.....	.....
N. J. Bielenberg.....	12265, V. 31	27 cows	810.00	.....	.....	.....	.....
N. J. Bielenberg.....	12265, V. 31	55 cows	1320.00	.....	.....	.....	.....
N. J. Bielenberg.....	12265, V. 31	73 cows	1314.00	.....	.....	.....	.....
N. J. Bielenberg.....	12266, V. 31	1 cow	10.00	.....	.....	.....	.....
N. J. Bielenberg.....	12266, V. 31	57 calves	513.00	.....	.....	.....	.....
Quinlan Bros and Mrs. Quinlan.....	12266, V. 31	23 cows	506.00	.....	.....	.....	.....
John Quinlan.....	12266, V. 31	18 cows	360.00	.....	.....	.....	.....
John Quinlan.....	12266, V. 31	41 calves	410.00	.....	.....	.....	.....
John Quinlan.....	12266, V. 31	1 cow	15.00	.....	.....	.....	.....
W. T. Elliott.....	12266, V. 31	43 steers	1763.00	.....	.....	.....	.....
E. Staffanson.....	12267, V. 31	1 cow	18.00	.....	.....	.....	.....
E. Staffanson.....	12267, V. 31	1 steer	22.00	.....	.....	.....	.....
Davis & Williams.....	12267, V. 31	.....	.....	1503 wethers	\$5763.15	.....	.....
Peter Johnson.....	12269, V. 31	.....	.....	161 lambs	362.25	.....	.....

PURCHASED BY MONTGOMERY & WENGER IN 1903-1904.

(Continued.)

Name.	Page.	—CATTLE—		—SHEEP—		—HOGS—	
		Number.	Price.	Number.	Price.	Number.	Price.
Peter Johnson	.....12269, V. 31	.....	.....	11 wethers	35.75	.....	.....
John Gerdt	.....12269, V. 31	.....	.....	250 wethers	1375.00	.....	.....
Gough & Mack	.....12269, V. 31	.....	.....	350 wethers	1522.50	.....	.....
Gough & Mack	.....12272, V. 31	.....	.....	125 lambs	281.25	.....	.....
George Johnson	.....12272, V. 31	.....	.....	154 lambs	340.50	.....	.....
George Johnson	.....12272, V. 31	.....	.....	361 ewes and lambs	812.25	.....	.....
Andrew Nelson	.....12273, V. 31	.....	.....	192 ewes and lambs	393.60	.....	.....
Geidts & Westfall	.....12277, V. 31	.....	.....	451 lambs	835.35	.....	.....
Laribie Bros.	.....12278, V. 31	.....	.....	1003 wethers	3009.00	.....	.....
Laribie Bros.	.....12278, V. 31	.....	.....	21 ewes	42.00	.....	.....
Laribie Bros.	.....12278, V. 31	.....	.....	787 lambs	1455.95	.....	.....
John Geidts	.....12279, V. 31	.....	.....	406 lambs	751.10	.....	.....
Wm. Williams	.....12279, V. 31	.....	.....	878 lambs	1624.30	.....	.....
Wm. Williams	.....12280, V. 31	.....	.....	107 wethers	321.00	.....	.....
A. Blum	.....12282, V. 31	.....	.....	514 wethers	1285.00	.....	.....
A. Blum	.....12282, V. 31	.....	.....	115 ewes	230.00	.....	.....
H. Knoup	.....12283, V. 31	.....	.....	292 ewes	584.00	.....	.....
		594	\$18602.00	7581			\$21023.95

PURCHASED BY MONTGOMERY & WENGER IN 1904-1905.

Name—	Page.	—CATTLE—		—SHEEP—		—HOGS—	
		Number.	Price.	Number.	Price.	Number.	Price.
Quinlan Bros.	12289, V. 31	38 cows	\$1121.00				
Quinlan Bros.	12289, V. 31	38 steers	1596.00				
Quinlan Bros.	12289, V. 31	3 steers	105.00				
Quinlan Bros.	12289, V. 31	3 steers	90.00				
Quinlan Bros.	12289, V. 31	16 calves	144.00				
W. D. Strickland	12289, V. 31	5 cows	130.00				
Robert Fisher	12289, V. 31	4 cows	100.00				
Robert Fisher	12289, V. 31	1 cow	20.00				
Robert Fisher	12289, V. 31	7 calves	84.00				
Robert Fisher	12289, V. 31	2 calves	16.00				
Robert Fisher	12289, V. 31	8 cows, 1 bull	115.60				
Eli Dezourdi	12289, V. 31	23 calves	253.00				
J. S. Boone	12290, V. 31	3 cows	84.00				
J. S. Boone	12290, V. 31	2 cows	66.00				
J. S. Boone	12290, V. 31	1 cow	35.00				
James Perkins	12291, V. 31	22 cows	506.00				
John Quinlan	12291, V. 31	21 cows	504.00				
John Quinlan	12291, V. 31	4 cows	88.00				
John Quinlan	12291, V. 31	1 steer	22.00				
John Quinlan	12291, V. 31	11 calves	88.00				
R. E. Jenderson	12292, V. 31	20 calves	165.00				
M. P. Lavelle	12292, V. 31	4 steers	88.00				
M. P. Lavelle	12292, V. 31	7 cows	154.00				
M. P. Lavelle	12292, V. 31	5 cows	105.00				
M. P. Lavelle	12292, V. 31	9 calves	90.00				
Albee Bros.	12293, V. 31	1 cow	18.00				
Albee Bros.	12293, V. 31	1 cow	16.00				
Albee Bros.	12293, V. 31	1 calf	8.00				

PURCHASED BY MONTGOMERY & WENGER IN 1906.

Name, Vol., Page—	—CATTLE—		—SHEEP—		—HOGS—	
	Number.	Price.	Number.	Price.	Number.	Price.
Peter Normande, V. 31, 12305.....	15 Calves	150.00				
Peter Normande, V. 31, 12305.....	8 Calves	72.00				
Peter Normande, V. 31, 12305.....	5 Cows	135.00				
L. E. Cousins, V. 31, 12305.....	3 Calves	27.00				
W. T. Elliott, V. 31, 12305.....	20 Cows	566.00				
A. M. Day, V. 31, 12306.....	8 Steers	290.40				
A. M. Day, V. 31, 12306.....	1 Steer	31.90				
Jno. Karlock, V. 31, 12306.....	1 Cow	30.00				
Peter Valiton, V. 31, 12306.....	90 Steers	3600.00				
A. Larabie, V. 31, 12306.....	15 Calves	120.00				
William Stevens, V. 31, 12306.....	5 Calves	50.00				
William Stevens, V. 31, 12306.....	5 Calves	30.00				
A. C. M. Co., V. 31, 12307.....	15 Calves	225.00				
A. C. M. Co., V. 31, 12308.....	3 Calves	22.50				
Geo. Freeman, V. 31, 12309.....	.....	.....			1	22.10
Geo. Freeman, V. 31, 12309.....	.....	.....			9	112.00
Geo. Freeman, V. 31, 12309.....	.....	.....			22	270.40
Geo. Freeman, V. 31, 12309.....	.....	.....			5	46.15
John Geidts, V. 31, 12310.....	.....	.....	124 Lambs	372.00		
John Geidts, V. 31, 12310.....	.....	.....	150 Lambs	450.00		
Mary Norton, V. 31, 12310.....	.....	.....	2 Sheep	11.00		
Totals.....	194	5349.80	276	833.00	37	450.65

TOTAL PURCHASES OF JNO. WENGER FROM 1903 TO 1906,
INCLUSIVE.

Name, Vol., Page, Date—.....	Cattle.	In the Valley.
Elliott, V. 29, 11531, 1903.....	30 Steers	
Morgan Evans, V. 29, 11536, 1903..	3	
Geo. Jacques, V. 29, 11534, 1904...	4	
Chas. Bowman, V. 29, 11534, 1903..	11	
Geo. Parrott, V. 29, 11534, 1904...	5	
Morgan Evans, V. 29, 11536, 1904.	6	
John Furst, V. 29, 11537, 1904.....	2 Cows	
Pete Normandie, V. 29, 11631, 1905	30	
Chas. Bowman, V. 29, 11634, 1905.	1 Bull	
Chas. Bowman, V. 29, 11635, 1905.	2 Steers	
Quinlan, V. 29, 11531, 1904.....	1 Bull	Rock Creek cattle
Quinlan, V. 29, 11531, 1905.....	1 Bull	Rock Creek cattle
Wm. Evans, V. 29, 11538, 1905....	12	French Gulch cattle
J. O. Allen, V. 29, 11533, 1905....	8 Cows	French Gulch cattle
Evan Evans, V. 29, 11540, 1905....	50 Steers	French Gulch cattle
Quinlan Bros., V. 30, 11665, 1905..	75	Rock Creek cattle
	<hr/> 241	
	In the Valley.	Outside the Valley.
Totals.....	94	147

AMOUNT OF STOCK BOUGHT BY MONTGOMERY AND WENGER OF MEMBERS OF THE DEER LODGE
VALLEY FARMERS ASSOCIATION IN THE YEARS 1903, 1904, 1905, 1906.

Name—	Number.	—CATTLE—		—SHEEP—		—HOGS—	
		Price.	Number.	Price.	Number.	Price.	Number.
N. J. Bielenberg	27 cows	\$ 810.00					
N. J. Bielenberg	55 cows	1320.00					
N. J. Bielenberg	72 cows	1314.00					
N. J. Bielenberg	1 cow	10.00					
N. J. Bielenberg	57 calves	513.00					
W. T. Elliott	43 steers	1763.00					
E. Staffanson	1 cow	18.00					
E. Staffanson	1 steer	22.00					
Peter Johnson			161 lambs	362.15			
Peter Johnson			11 lambs	35.75			
George Johnson			154 lambs	340.50			
George Johnson			361 ewes & lambs	812.25			
Robert Fisher	4 cows	100.00					
Robert Fisher	1 cow	20.00					
Robert Fisher	7 calves	84.00					
Robert Fisher	2 calves	16.00					
Robert Fisher	8 cows, 1 bull	115.00					
J. S. Boone	3 cows	84.00					
J. S. Boone	2 cows	54.00					
J. S. Boone	1 cow	35.00					
John Quinlan	21 calves	504.00					
John Quinlan	4 calves	88.00					
John Quinlan	1 steer	22.00					
John Quinlan	11 calves	88.00					
L. E. Couzens	3 cows	57.00					
L. E. Couzens	4 calves	31.00					
Hiram Staffanson	12 cows	252.00					
Total	342	\$7320.60	687	\$1550.65			

AMOUNT OF STOCK BOUGHT BY MONTGOMERY AND WENGER OF MEMBERS OF THE DEER LODGE
VALLEY FARMERS' ASSOCIATION IN THE YEARS 1903, 1904, 1905, 1906.

(Continued.)

Name--	---CATTLE---			---SHEEP---			---HOGS---		
	Number.	Price.	Number.	Price.	Number.	Price.	Number.	Price.	
Brought Forward	342	7320.60	687	\$1550.65					
Peter Johnson			112 lambs	\$252.00					
Geo. Johnson			145 lambs	434.25					
Geo. Johnson			17 ewes	45.05					
Geo. Johnson			140 lambs	315.00					
L. E. Cousins	3 calves	2.00							
W. T. Elliott	20 cows	566.00							
John Carlock	1 cow	30.00							
Mary Norton			2 sheep	11.00					
Elliott	30 steers								
Geo. Parrott	5 steers								
John Furst	2 cows								
Total number of cattle.....	403	7943.60	1103	2607.95					

AMOUNT OF STOCK BOUGHT BY MONTGOMERY & WENGER OF MEMBERS OF THE DEER LODGE
VALLEY FARMERS' ASSOCIATION AND KEPT OUTSIDE OF THE DEER LODGE VALLEY
IN THE YEARS 1903-04-05-06.

—CATTLE—

Name.	Number.	Price.			
Quinlan Bros. and Mrs. Quinlan	23 cows	506.00	Rock Creek	cattle	
Quinlan Bros.	38 cows	1121.00	Rock Creek	cattle	
Quinlan Bros.	38 steers	1596.00	Rock Creek	cattle	
Quinlan Bros.	3 steers	105.00	Rock Creek	cattle	
Quinlan Bros.	3steers	90.00	Rock Creek	cattle	
Quinlan Bros.	16 calves	144.00	Rock Creek	cattle	
Total		\$3562.00			
Quinlan	1 bull	.....	Rock Creek	cattle	
Quinlan	1 bull	.....	Rock Creek	cattle	
Wm. Evans	12 bulls	.....	French Gulch	cattle	
J. O. Allen	8 cows	.....	French Gulch	cattle	
Evan Evans	50 steers	.....	French Gulch	cattle	
Quinlan Bros	75 steers	.....	Rock Creek	cattle	
Total	.....	268			

TOTAL OF ALL PURCHASE, MONTGOMERY & WENGER, FROM 1903 TO 1906 INCLUSIVE.

Year—	—CATTLE—		—SHEEP—		—HOGS—	
	Number.	Price.	Number.	Price.	Number.	Price.
1903-1904	594	18612.00	7581	21023.95	.....	.....
1904-1905	295	6465.10	7323	23956.70	.....	.....
1906	194	5319.80	276	833.00	37	450.65
Totals	1083	30426.90	15180	45813.65	37	450.65

ABSTRACT OF TESTIMONY OF WILLIAM MONTGOMERY, DEFT. WIT.:

The Court will notice one very significant thing in the prices paid, per head, for stock, by Montgomery, and that is, as soon as the smoke-affected portion of the valley is reached, prices for stock decline, as for instance:

Paid Valiton \$47.50 per head for steers, while in the smoke district (V. 31, 12297), paid Jno. Quinlan \$22.00 per head for steers and we find on the same page that E. Staffanson, who lives, and keeps his stock within four miles of the smelter, only got \$18.00 for his steer, and *one was all he had to sell.* (V. 31, 12265.)

The record shows that Mr. Staffanson abandoned his ranch and left the country.

On page 12293 paid Lavelle (Lavelle is at Gregson Springs, six miles from smelter), \$22.00 per head for steers and he only had four to sell.

See him paying to Valiton again \$40.00 per head for 90 steers. Valiton out of the Smoke Zone. (V. 31, 12307.)

The prices above quoted and numbers bought show beyond question that the testimony of the farmers and stock raisers for the Plaintiff *is true.*

First—Scarcely any stock is left in the Smoke Zone.

Second—Prices for what they do sell are much less than received for stock from outside of the Smoke Zone, as Bielenberg for Plaintiff and Montgomery for Defendants, both of whom are butchers and stock men, state: “The stock do not get as fat, and are not as heavy in the Deer Lodge Valley or Smoke Zone, as stock from outside.

Shows Montgomery handled several thousand sheep in the valley, not note this carefully, these sheep were fed hay and hay cut the year the smelter was closed, or in 1903, and further note, he has fed no sheep since that time, in the valley, except for immediate slaughter, and these sheep fed in 1903, on that year's hay crop, were *mutton*, and none of the sheep were in the valley of over an average of sixty days. (V. 31, 12315.)

Admits he only uses *outside hay* to feed cattle which he ships from Anaconda. (V. 31, 12346.)

Admits he has no permanent feeding place in the Deer Lodge Valley. (V. 31, 12350.)

(NOTE—Still here is his place of business and shipping point, and hay is cheap, still no feeding done by this man, except for immediate slaughter.)

CLINTON MOVES TO STRIKE OUT MONTGOMERY'S PURCHASES. (V. 32, 12382-3.)

Admits he told Staton he would not give him fifty cents a ton for his hay. Staton's testimony shows the same state of facts, and Staton further testifies it was of the same class, and from the same ranch that Montgomery paid him \$13.00 per ton for prior to 1902. (V. 32, 12422.)

Quite a difference between fifty cents and \$13.00.

Staton's ranch, where this hay was cut, is three and one-half miles southeast of the smelter.

His testimony shows he has bought in three years as follows, from the one hundred and seven names of the Farmers' Association, the year the smelter closed, 1903: three hundred and eighteen head; 1904 and 1905, ninety-three head; 1905, 1906, forty-four head. (V. 32, 12445-6.)

Admits slaughtering six thousand head of cattle a year

and as high as thirty-six thousand sheep—and all of his sheep purchased were ranged entirely out of the “Smoke Zone” of the valley. (V. 32, 12447.)

Although Johnson (Geo. and Peter), reside in the Smoke Zone, their sheep are ranged out of it.

Admits purchasing more hay in 1903, the year the works were closed, than the entire period since. (V. 31, 12452.)

Refuses to pasture sheep in the valley, even when offered it free of charge. This was the second crop of alfalfa cut on C. L. Beal’s place. (V. 32, 12455-6.)

Montgomery admits that in 1901, prior to the smelter, he turned in a bunch of beef steers on W. C. Staton’s pasture in November; left there thirty days; weighed them when turned in, and weighed them when taken out, and they were in as good condition when taken out as when put in. (V. 32, 12459.)

(NOTE—Staton’s testimony shows these cattle were in his field during a bad snow storm in November and December, and at about the same time these steers were in there there was about four hundred head of stock in this field.)

Now, this is the same field where the Defendants’ attorneys would try to make the Court believe Staton’s stock, less one-third the number that were kept there in 1901, prior to the smelter, starved in October of 1905.

One startling thing is this—Montgomery knew he could keep beef steers in beef condition on the pasture alone in Staton’s fields prior to the smelter damage, while after the smelter smoke trouble he would not pasture in the Deer Lodge Valley at all.)

HISTORY OF THE VALITON STEERS ON SECTION SIXTEEN—DEFENDANTS' EXPERIMENT IN BEEF FEEDING IN THE "SMOKE ZONE."

We will show by the DEFENDANTS' OWN WITNESSES that conditions are exactly as testified to by the farmers and stock raisers for the Plaintiffs.

They purchase from Mr. Valiton twenty steers. (Mr. Valiton's ranch is outside of the "Smoke Zone," and his cattle range where there is no smoke damage.) These cattle were placed on feed on the company's farm on February 13th, and fed until June 8th, or a period of ninety-five days. (V. 46, 18274.)

We first take pen No. 1, consisting of ten steers, whose total weight was 8685 pounds, or an average of 868 pounds to the steer. Total weight on June 8th was 10845 pounds. (V. 46, 18269.)

These steers were sold to Montgomery, a Company tenant, for \$37.50 or at a price of \$3.40 per hundred pounds. Big Hole, or outside steers at this time averaged 1400 pounds in weight. (V. 19, 7317.)

On page 7321, V. 19, Geo. Moore, Deft. Wit., states he pays from \$3.80 to \$4.00 per hundred for Big Hole steers, showing a difference of sixty cents a HUNDRED pounds in favor of the outside steers.

Now let us take the weight of these cattle, and compare same. Mr. Moore states the Big Hole steers average 1400 pounds. (V. 19, 7317.)

	Weight.	Price per cwt.	Price per steer.
Big Hole steer	1400	\$4.00	\$56.00

Company experimental steer...1084 3..40 37..50

We see that the BEST PRICE for the best of the Company steers, which steers unquestionably were given the very best care that steers could be given (page 21220, E. Jones, Plf. Wit., testifies the steers were fed carrots as well as hay), and what do we see?

In the first place, these steers were never good beef, the BEST OF THEM—Pen Number one.

Pen number two only in good stock condition, and the price paid shows it, and the Court must also take into consideration who bought these company steers, a company tenant—one who would pay all they were worth and more too, if necessary, and we find that a beef steer fed outside of the Deer Lodge Valley fetches sixty cents per hundred more, as sold by the pound, and an outside steer brings \$18.50 more per head than the best steer the company could possibly produce after ninety-five days feeding on the best alfalfa hay they could procure in the valley.

It is true they fed this bunch of ten or bunch number one for a short period of fifteen days on Para hay. (This ranch is near the Bliss ranch.); and the evidence of Cook, Deft. Wit., shows the gain for the ten steers for fifteen days to be less than a pound per steer per day. The gain could not have been satisfactory, as they then commenced to feed ALFALFA HAY, which plant Ralph E. Smith, Deft. Wit., GIVES AS ONE OF THE MOST CRESIS-TANT PLANTS TO SMELTER SMOKE, which slight gain, or a gain of thirteen pounds could occur inside of twenty-four hours by weighing a steer immediately before giving it water, and then weighing it immediately after, and by the changing of the hay to ALFALFA shows

that the Defendants themselves saw these steers were not gaining as they should and they changed their feed to alfalfa.

This experiment, for the purpose of producing evidence, and conducted at great expense by Defendants, simply shows that the evidence of the farmers of the valley is true, that is, to-wit: that **TO KEEP THEIR STOCK ALIVE, THEY HAVE TO KEEP THEM IN CORRALS,** and barns, and feed hay, and that the hays of the Deer Lodge Valley, at the present time, does not make them fat, as it formerly did.

Mr. Nick Bielenberg's testimony, pages 4432-33, shows prior to the smoke period that he fed cattle on Deer Lodge Valley hay, and shipped them to Chicago, and they outsold the Big Hole cattle ten cents per hundred pounds, which is quite a difference in the price of valley cattle before and after the operation of the Washoe Smelter.

Mr. Bielenberg, Plf. Wit., page 4432, states, in his testimony, exactly the conditions as is shown by this beef feeding experiment of the Defendants. He states, "It takes more hay to satisfy an animal. I am feeding as good a grade of cattle as there is in the State and **CAN'T GET THEM FAT, ALTHOUGH THEY ARE IN GOOD CONDITION.** (Meaning not beef.)

The total gain for the ten choice steers was twenty-one hundred and sixty pounds, again according to Defendants' witness, Cook.

The defense could if they saw fit to do so, make a **GAIN** or **LOSS** of seventy-five pounds in a steer in forty-eight hours by not feeding or watering for a period of twenty-four hours, then weighing and then give them all the feed

and water they wanted off the next twenty-four hours, and then weighing and you have your gain or loss, either of which you wish to produce in Court.

The Court will bear in mind that there were twenty steers in this feeding experiment, and we have been giving the results from the best of them or Pen Number one. Now let us take up Pen Number two, only two of which ten Montgomery would buy at all, and at a price of \$20.50 a head.

Average weight of steers in pen No. 2 on commencement, eight hundred and thirty-two pounds; average weight per steer after ninety-five days feeding nine hundred and ninety-five pounds and a gain per steer of one hundred and sixty-three pounds, and still these steers were only in stock condition, NOT BEEF AT AL. (V. 32, 12326.)

It simply shows this to a stock man that these were very poor steers when they were brought or else there was some manipulation of the scales.

Look at the price per pound paid for two of the best of these steers—only about two cents per pound, just one-half what outside steers sold for PER POUND, and less than one-third OF WHAT OUTSIDE STEERS SALD FOR PER HEAD.

This experiment shows the stock raiser of the valley has two separate and distinct causes of damage on every steer, first a loss in QUALITY of from sixty cents to \$2.00 per hundred pounds, and a loss in fattening or growth of at least forty per cent or simmered down to a loss of from \$18.50 to \$35.50 on each steer, as outside steers bought by

Geo. Moore, Deft. Wit., and shipped from Anaconda cost him on an average of \$64.00 a steer.

Now, bunch number two were fed hay grown in the immediate vicinity of the Bliss ranch, wild hay, which prior to the smelter was of better beef feeding qualities than alfalfa, and these outside steers bought by Moore, which were fattened exclusively on wild hay grown in a valley where no grain of any kind is grown, and as the evidence of Bielenberg and others of Plaintiff's witnesses all testify that prior to the operation of the Washoe smelter, the wild hay of the valley fattened beef, and was first-class beef, as good as any from the Big Hole. (Montgomery, Deft. Wit., page 12323, V. 32), states the native wild hay is best for fattening beef.)

What a change—only two of ten head could be used by a butcher after ninety-five days of feeding, and he, himself, testifies these two were not beef. The price, \$20.50 per head, a price of a veal calf, as the Defendants sold to this same man seventeen calves less than a year old for \$15.00 a head.

Compare the price \$15.00 for a veal calf as against \$20.50 for a beef steer, fed on wild hay from the Deer Lodge Valley, a hay which all the witnesses for both plaintiff and defendants testify is the best class of hay grown in Montana to fatten beef, and only in the Deer Lodge Valley, and since the erection of the Washoe smelter do we find the wild hay of this Valley of such poor quality as only to sustain life.

What farmer or stock raiser could exist if the condition of feeding cattle existed everywhere as was shown to exist on Section Sixteen, Defendants' experimental farm. Fed

twenty steers, NONE BEEF, of which eight could not be used at all, only sixty per cent of steers fed could be used.

They fed these twenty steers twenty-five tons of hay. The total price received for all THAT COULD BE SOLD was \$416.00, and taking the average price of wild hay and alfalfa in the stack, prior to the erection of the Washoe smelter, \$8.00 a ton, and these twenty steers were fed hay to about one-half of the value received for beef.

The cost of the hay, hauling same to the ranch and care of these steers, which the Defendants claim was only cared for as a good farmer cares for his stock, unquestionably cost more than the whole twenty head would have sold for and in this estimate we exclude Dr. Gardiner's salary of \$700 a month and expenses.

This unquestionably is the most expensive beef ever produced on earth, if we include his salary—which after all WAS NOT BEEF AT ALL.

Alva Cook, Deft. Wit., swears the eight steers returned were not fit for beef. (V. 32, 18323.)

We will now take the Defendants' sheep feeding experiments, and what do we find? They take one hundred and one sheep, and divide them into three pens, numbering these pens numbers one, two and three.

Pen number one was fed on native wild hay from the Threlkeld ranch, which adjoins the Bliss ranch. They were fed for a period of 116 days.

None of the sheep were sold, and all the losses of sheep were undoubtedly from this pen, No. 1, fed from hay cut near the Bliss ranch. Dr. Gardiner testifies that all sheep were healthy and only two died, and these died as a result of dipping them for an affection of ticks.

Mr. Evan Evans, Plf. Wit., and a man working for the Defendants at the time (V. 54, 21204), states they would die off every once in a while, and Doctors would examine them, and on page 21229 he gives the number that died as ten or twelve sheep.

We think that this exposure of Dr. Gardiner's statements as to the health of these sheep is important, as they were the only sheep kept in the Smoke Zone at this time.

Cook's testimony shows 67 head sold to Montgomery; 5 head killed; 14 head on the ranch. Gardiner shows 2 died as result of dipping. Total 88 head.

A total of eighty-eight accounted for by the Defendants, or a shortage of sheep of thirteen head. Jones swears positively ten or twelve died and as thirteen are missing, Jones unquestionably is inside of the number of deaths.

The Defendants do not give the price paid for the Valiton cattle, nor do they give the price paid for or received for these sheep, and the feeding of the hays cut in the vicinity of the Bliss ranch to sheep for the short period of 116 days resulted in the death of ten or twelve of pen No. one, and as none of these sheep were sold from this pen, we are safe in inferring none were fit for slaughter, while pens Nos. two and three were sold to MONTGOMERY, ACCORDING TO COOK, but Montgomery, in his total stock purchases, which he says is a list of all stock purchased by him, fails to give any SHEEP PURCHASED BY HIM FROM Defendants' Section Sixteen farm or anywhere else from the defendant.

The gain in fresh of pen No. one or eight and seven-tenths (8.7) pounds per sheep in 116 days, is scarcely enough to cover the growth of the wool for that period.

Pen No. two fed alfalfa (one of the most resistant plants to smelter smoke. See Deft. Wit., Ralph E. Smith); gained twenty and one-half pounds per sheep.

This experiment shows the greater amount of the alfalfa fed the greater the gain of the sheep, as pen No. three fed almost exclusively on alfalfa, made the largest gain, and Defendants' own witness, Ralph E. Smith, in connection with the farmers' testimony, shows alfalfa leaves drop off when injured by the smoke, and thus little damage is done by feeding alfalfa hay; another reason is the quick growth of alfalfa in not being exposed to the fumes for as great a length of time as other hays.

The Deer Lodge Valley, in the Smoke Zone, produces ten tons of other hays to one of alfalfa. Over one-half of the hay is native wild hay, still the Defendants buy one-half alfalfa or thirty tons, and thirty tons of other classes to conduct their experiments.

Pen No. two of the cattle which were fed exclusively on wild hay could not be sold for beef at all. (V. 46, 18268.)

Pen No. one, sheep fed on this same wild hay; was not a mutton sheep in the bunch.

QUALITY OF PRODUCE AND MARKETS.

Defendants state that the farmers of the valley have fed their hay with good results, while the record shows directly the opposite. All Complainants' witnesses state it *takes a great deal more hay to feed than formerly, and that where prior to 1902 they maintained their horses on hay alone, they now have to feed grain and bran—while formerly, as shown by the testimony of numerous witnesses for Com-*

plainant and Defendants, as well, cattle were wintered on about one ton of hay to the head. Now it takes from two to three times as much and they do not get fat.

Defendants quote the names of the witnesses for the Defendants, which they claim show purchase from practically every ranch in the smoke zone. The Court will notice that there are only two farmers in this entire list of witnesses given—Chas. Du Bey, Deft. Wit., who farms about twelve or fifteen acres, raises no hay or grain, and who states his principal business is hauling wood and stulls, and F. S. Henault, Deft. Wit., who is a Company tenant and whose testimony shows he works for Defendants, and who could purchase more hay in the stack for the same amount he pays in rent and who states if he was not in the employ of the Defendants, he would not be renting the ranch on which he lives, which belongs to the Defendants.

All the other witnesses quoted are in the dairy business or hauling wood, or working directly for Defendants or engaged in business in the City of Anaconda.

The stock fed for beef or mutton in the valley are beef cattle and mutton sheep when brought in there, and are only fed there pending their slaughter and are not fed and fattened there for the market, and the Court will notice another fact in connection with this *feeding of stock by Montgomery & Howard, none are fed on hay grown closer to the Smelter than the ranch of C. L. Beal, or about twelve miles.*

The cattle fed at Scott Peck's are held there for convenience to the slaughtering plant, and only in small numbers.

The testimony of Mr. Montgomery shows they slaughter *about 550 cattle a month and about 1500 sheep*, and as the *highest amount of beef cattle at any time had in the Deer Lodge Valley by Montgomery and Wenger does not exceed 200 head, it shows beyond question that these cattle are not fed for any length of time on valley hay, and can not be used to show the good or bad quality of the hay of the Deer Lodge Valley*, as they are not subjected to the effects of the hay for any length of time. The only actual attempt to fatten cattle on the hays of the valley was conducted by the Defendant Companies on Section 16, and what was the result, as shown by Montgomery and Cook's testimony? And these were not cattle from the smoke infected portion of the valley, but were bought from Peter Valiton in Lower Deer Lodge Valley; the testimony shows there were 20 head of two-year-old steers (coming threes). Montgomery states he purchased only twelve of the twenty. (V. 31, 12340.)

The testimony of Alva Cook, Deft. Wit., shows these twenty steers were driven to Montgomery's slaughter house and eight of the twenty returned to the ranch, or Section 16. *Why? Because these eight returned were not fit to slaughter at all.* (V. 31, 12326.)

Montgomery states he purchased ten of the best at \$37.50 a head and two of the remaining ten at \$20.50. The prices paid for these steers *show they were not beef, even the ones bought by Montgomery*, Deft. Wit., and there is no question if they had have been beef, more money would have been paid for them, and undoubtedly when these steers were selected for this experimental purpose, the best that could be obtained were bought and all were thrifty grow-

ing steers; and still, only twelve out of twenty could be sold at all, and two of these for only \$20.50, showing these were not in any manner beef. Here are Defendants themselves, who can only get 50 per cent of the steers fed for beef in condition so they can be sold at all. (V. 31, 12326.)

Montgomery states he paid the market price for these cattle at the time they were bought.

This statement means nothing as to their *beef condition*, for cattle always have a market price regardless of whether they are beef or not, and the price paid for these cattle show that ten of them were inferior beef, and two not beef at all, while eight were of no value at all for beef and were refused by Montgomery.

Take the price paid for Bielenberg's steers from the Big Hole, about \$56.00 a head as against \$37.50 for company steers, a difference of about \$18.50 a head. This experiment of the Defendants clearly substantiates the testimony of Bielenberg and others that *it is impossible at the present time to make beef if fed Deer Lodge Valley hay*; while the testimony of Bielenberg and others show prior to 1902 *the hay of the Deer Lodge Valley made as good beef as the Big Hole hay*.

The method of handling sheep in the Deer Lodge valley by Montgomery and company is the same as cattle, only held there for immediate slaughter, and proves nothing as to the actual fattening of sheep for mutton.

Montgomery's losses of sheep were heavy, considering the fact that the sheep fed in the valley were mutton sheep. He should not have lost any at all.

The record shows Montgomery's hay purchases in the

valley steadily decreasing; winter of 1903-4, \$4793; 1904-5, \$4301.25; 1905-6, \$2499.86. These are his purchases in the entire valley.

Mr. J. B. Gnose, Def. Wit., testifies that the quality of the Deer Lodge Valley hay was superior to Bitter Root, *which is true, if undamaged by smelter fumes*, but if this is the case, at the present time why did Mr. J. B. Gnose ship hay from *Wisc River, Montana*, to Nels Pearson to feed Pearson's stock?

Pearson is living, as the testimony shows, on the ranch of W. C. Staton, and the hay that Mr. Gnose states is superior to Bitter Root hay was the hay *bought by Gnose & Cooney at Staton's sale for \$5.25 a ton in October, 1905, and notwithstanding the superior quality of this hay, he shipped hay to feed on this ranch that would have cost at least \$14.00 a ton on the car f. o. b. Staton's ranch, while he bought Staton's hay for \$5.25.*

Can the Court believe J. B. Gnose's testimony in the face of these facts?

As the ready sale of hay in 1906, most of the hay was fed to the farmers' own stock and what was sold was sold at greatly reduced prices, from \$4.00 to \$6.00 a ton less than hay of the same class from outside points sold for, and the only reason of the sale at all was the great scarcity of hay in Montana (V. 54, 21429), principally on account of the increased consumption.

As to the sale of the 1906 crop of hay, Complainant closed his case in chief prior to the harvesting or sale of the 1906 crop, and this was not gone into on rebuttal to any extent, except with W. C. Staton, and he testified that the best price he could get for his hay was \$9.00 a ton,

baled, f. o. b. Willow Creek, which was about \$6.00 a ton under the market price for the same class of hay.

The testimony of Mr. Conyne shows from January 1, 1906, to July 6, 1906, he only bought \$688.75 worth of hay and straw from the entire valley. Of this amount \$133 worth of hay and \$167 worth of straw was bought from members of the Farmers' Association, or a total of hay and straw for six months of 1906 of \$280, while during the same period he bought and shipped into Anaconda hay to the value of \$1962.

The record shows that McCallum & Cloutier Company bought Staton's hay for a contractor on the Milwaukee Railroad. Paid \$9.00 a ton for it f. o. b. Willow Creek. Freight rate to Anaconda 80 cents a ton, or \$980 for this hay f. o. b. Anaconda, at the same time hay in Anaconda of the same class from outside points sold for \$4.00 to \$6.00 a ton more than valley hay.

Bielenberg states on page 21513, V. 54, that hay from other points in Montana was worth \$18 to \$20 a ton; at the same time he was buying Deer Lodge Valley hay for \$11.50 a ton, but only fed it to cattle kept for immediate slaughter.

The above testimony shows valley hay worth from \$6.50 to \$8.50 a ton less in Butte than hay from other points. Let the Court take into consideration the fact that the hay produced in the valley has to compete with all the valleys of Montana, and the further fact that there is a difference in price of from \$4.00 to \$6.00 a ton.

What does this mean? Simply that the producer of hay in the valley can not compete, and his business is ruined, and a further fact is, there is no regular demand at the

present time for hay from Deer Lodge Valley and it can only be sold when hay is scarce and hard to obtain from other points.

Hay and stock raising go together; destroy one and you destroy the other; injure one and you injure the other; neither can exist separately, and the principal market for the valley hay was the feeding of stock. Destroy stock and you destroy hay values. Poison and reduce the yield of hay, as has been done in the valley, and you destroy the stock industry, and both of these conditions have been brought about by the smelting operations in the Deer Lodge Valley.

There also was a market created for valley hay by the Defendants themselves by the purchase in the fall of 1906 of large numbers of cattle from out of the smoke zone. These cattle answered two purposes in this case. First, so Dr. Pearson could count a large number in the smoke zone. Second, to eat the hay grown in the valley. This was only a temporary arrangement and doubtless done to furnish testimony in this case, as prior to 1904 the Defendants were not engaged in the stock or farming business, and since the close of this case are disposing of what stock they have.

If the hay sold for good prices in 1906 from Deer Lodge Valley and was a ready sale, why did not Defendants show the sale of some of the products of their hay ranches at normal figures and to dealers in the City of Butte or Anaconda? Undoubtedly they would have introduced this testimony if it could have been obtained.

The testimony of the hay dealers of Anaconda show that the hay they have sold from the valley has been sold

in small quantities, a bale or so at a time. *Mr. W. J. Allen, Deft. Wit., states none of the large users of hay buy valley hay, simply showing that the persons using valley hay do not use it continuously, so it is not fed long enough to produce the effect that continuous feeding does, and another thing to take into consideration is that the people using hay in cities also use large quantities of grain and bran, and where these are fed in connection with hay it would naturally reduce the amount of hay consumed by an animal, and thus render it less liable to injury.*

The farmers in the valley simply confirm the condition, as shown by the witnesses for the Defendants. The farmers all state it is necessary now to feed grain and bran to keep their stock in any fair condition, whereas prior to 1902 this was not necessary, they did well on the hay *alone*.

ABSTRACT OF DEFENDANTS' WITNESSES.

E. P. MATHEWSON, Deft. Wit.:

E. P. Mathewson is the manager of the Reduction Works known as the Washoe Smelter at the present time. (V. 33, 12779.)

States that in his opinion that no further precautions are necessary to prevent injury. Gives this only as his opinion. (V. 33, 12808.)

States that the smelters that he is familiar with treat similar ores (meaning Butte ores.) I do not know just exactly where you could find the same ores, but the emanations from the smelters smelting these ores would be similar in their nature to the emanations from the Washoe Smelter treating these ores. Such smelters are what is known as the Highland Boy smelter, near Salt Lake City;

the Bingham Consolidated at West Jordon, Utah; the United States Smelting and Refining Company's plant at West Jordon, Utah; the Ducktown of the Tennessee Copper Co., near Ducktown, Tennessee, and the American Smelting and Refining Co., at Murray, Utah; also gives the names of several other smelters.

(NOTE—Would call the Court's attention to the fact that most all the above smelters mentioned by Mr. Mathewson since his testifying have been declared nuisances by the Circuit Court and the United States Supreme Court. Record also shows that all of the above smelters together cannot smelt as much ore in one day as the Washoe Smelters. Mr. Mathewson tries to show by the records that the precaution taken by the Washoe Company to prevent injury is greater than any of these smelters, claiming that they all have the low chimneys and very few flue dust chambers, still Mr. Mathewson's testimony shows that only 175 tons of flue dust is saved daily in the Washoe works, the balance being allowed to escape through the chimney and as LONG AS IT IS ALLOWED to escape through the chimney we cannot conceive how it would be any less or greater damage than it would by adding or taking off a few feet of the chimney.)

States on page 12810, V. 33, that this smelter discharges sulphurous fumes and arsenic; they have smelting furnaces connected with them; they reduce or smelt copper and turn out sulphur fumes and arsenic fumes.

(NOTE—We wish to call the Court's particular attention to E. P. Mathewson, Deft. Wit., testimony on page 12821, V. 33, and the statements he makes regarding conditions at the plant of the Tennessee Copper Company, near Duckton, Tennessee.

He states that prior to the construction of the stack and flue it was their custom to heap roast the ore, and that

this heap-roasting destroyed everything in the vicinity, in the shape of vegetation. (V. 33, 12822.)

On the same page he states that after the erection of the tall chimney there seems to be no effect on the vegetation whatever.

States he saw grass growing quite near the chimney; saw garden truck growing quite near the chimney, and trees beginning to sprout on land where previously all vegetation had been destroyed for miles around. (V. 33, 12823.)

(NOTE—We wish to call the Court's attention to the above statements of this witness. As a matter of record that time has proven this witness' testimony to be entirely untrue. The facts are that at Ducktown they erected a tall chimney very similar to the one at the Washoe Smelter in Montana. This chimney at Ducktown, Tennessee, instead of doing away with the damage, simply caused the damage to spread further, and the damage became so great that *an injunction was granted against this plant by the United States Supreme Court* and in order to run they were compelled to manufacture this smoke into sulphuric acid.

This statement of Mr. Mathewson's in regard to the Tennessee Smelters, which was unquestionably colored by him when given, should lead this Court to examine his evidence very carefully, as his testimony shows that he is perfectly willing to swear to conditions as being facts, which only took time to show that they never were facts, and in order to show to the Court Mr. Mathewson's injustice and hostility to the agricultural interests, we refer to page 12823, V. 33, where he states that he had charge of the Monterey plant of the American Smelting and Refining Company in 1897 and 1898. He states that he had complaints made by a neighbor of damage from smelter smoke. The man did not press his claim, and abandoned the land, sold his water right.)

He admits that they damaged this man's land and says no settlement was made with him.

(NOTE—This statement of Mr. Mathewson's shows as far back as 1897 and 1897 he refused to do justice. He now comes into the Court and admits the plant of which he had charge, had ruined this man's property. Of course, the evidence shows that this man only had a small amount of land, but what he would do in small matters he would, unquestionably, do in larger ones, that is, try to avoid every just claim by every means in his power.)

In answer to the following question :

Q. Now with reference to the Washoe Smelter, is there any difference between the preventative measures taken at this time and the system of discharging the smoke as the smelter was originally designed and built?

A. Yes, there is quite a difference. As originally planned there were three large dust chambers built, one at the blast furnaces, one at the McDougall roasting furnaces and one at the converter building, none at all at the reverberatory. A chimney was built close to each one of these buildings. There were four chimneys in all, about two hundred and twenty-five feet in height and approximately 22 feet in diameter. These chimneys received the gases from their respective furnaces and discharged them into the atmosphere quite close to the building in which they were produced. The only dust collecting apparatus was that mentioned at the three buildings, the blast furnace, the McDougall and the converters. This we found to be inadequate and a new system of flues were put in, the old system still being retained. The old chimneys, however, were destroyed and abandoned. (V. 33, 12831-32.)

Q. Now, then, what lead up to the change in the system of the handling the smoke from the manner in which it was handled at this time?

A. There were complaints from the ranchmen in the valley that we were destroying their animals and some said the hay, or causing it great damage. We set about to investigate the matter and our investigator reported that damage *was being done*. We thereupon settled with these ranchers and promised to have a new apparatus put in as soon as possible and agreed to have it going by July 1st, 1903, otherwise we would not run the smelter. We started a series of experiments and hired the best expert smoke people we could find to find out the best and most profitable method of handling the smoke and making it harmless. We studied literature on the subject, and we finally concluded that the most practicable solution of the question was an enormous dust catcher between the furnaces and the chimney, and the chimney to be on the highest point near the smelter and should be made as high as considered practicable, the idea being to get all the dust particles out of the smoke before allowing the smoke to go into the atmosphere and to distribute the remaining smoke at such a high altitude that detrious substances in it might become diluted before it could possibly strike the ranches near the smelter.

(NOTE—His testimony on page 13074, V. 33, shows it generally strikes the valley about two or three miles from the stack.

(NOTE—The Court will see by the above language that the building of these dust chambers and the big stack *was only an experiment*, and Mr. Mathewson

admits these short stacks did damage in the year 1902. We believe it and as John Gillie stated, "the claims of the farmers, they believed to have merit, and they paid for the same.")

(NOTE—Mr. Mathewson's testimony also shows that they made promises to the farmers not to run again and do them further damage; that they agreed to shut down on the first of July, and they did shut down and *all of the witnesses that had any actual experience in farming noticed a difference in growing crops and on their stock.* (This was the summer of 1903. Vegetation took a new start; stock recuperated.) He sent investigators through the valley to ascertain if they were doing this damage claimed by the farmers and said investigators reported to him that they were, and the Company believed it and tried to take precautions to prevent it, and the records clearly show the year of 1904, after the erection of the Big Stack a like condition existed and the same investigators investigated the valley and made the same report; the same farmers complained that a like condition existed as had prior to the erection of the Big Stack, clearly showing that the experiment was a failure; that Mr. Mathewson knew it receiving information from the same source as he did to the condition existing in 1902, still Mr. Mathewson shows all through his testimony of the bias and prejudice he has against the farmers, for no other reason, apparently, than that his experiment failed, and it looks to us as if he is trying to place the blame of his own failure upon those who are unfortunate enough to own property in the region complained of.)

In answer to the question :

Q. What is the purpose of smelting these ores down there—for what values do you smelt? (V. 33, 12842.)

A. Principally to get the copper and incidentally the silver and gold from these ores. We also, from these ores, get a certain quantity of arsenic as a by-product.

(NOTE—Here let us call the Court’s attention to the testimony of Mr. Gillie, Deft. Wit., on page 13279-80, V. 34, when he makes the following statements in his evidence: “If we sprayed the smoke at Aanaconda it would be impossible to take care of the waste product. It is more desirable to turn it into the air.)

When asked the question :

Q. What other commercial product do you turn out besides copper, silver and gold? (V. 33, 12851.)

A. Arsenic. We turn out commercial arsenic at about two tons a day approximately.

(NOTE—We call the Court’s attention here that only two tons of arsenic is saved, or commercial arsenic, and the balance is shown by Professors Harkins and Swain’s testimony, undisputed in these records, are distributed into the atmosphere and by air currents scatter over the lands of the Deer Lodge Valley, and as Mr. Gillie says, “it is more desirable for the company to do so.”

Mr. Mathewson’s testimony further shows on the same page 17,000,000 pounds of copper, 600,000 ounces of silver and approximately 400 ounces of gold monthly are taken from these same ores, amounting in all to :

17,000,000 pounds copper at 12 cents.....	\$ 960,000.00
600,000 ounces silves at 5 cents	300,000.00
4,000 ounces gold at \$18	72,000.00
	<hr/>
	\$1,332,000.00

(NOTE—Here let us quote on page 12826, V. 33, from an argument of *Mr. Kelley* the following language, after an objection was interposed by the plaintiff, “*Now, please don’t misunderstand me. I don’t say that any man or any corporation can come into a Court of Equity and justify a wong committed on other people’s property, solely upon the ground that*

they are engaged in useful occupation; I don't think that the laws subverts that the use of one man's property, however small it may be, to the use of another corporation, however large it may be." Admitted. We believe Mr. Kelley's remarks correct and that *the Constitution of the State of Montana, Article 15, Section IX, substantiates every word of Mr. Kelley and goes further and adds to it when it says "the police powers of the States shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as will infringe equal rights of individuals or the general well being of the state."*

Further he is substantiated by the Constitution of the United States, Article V, which says, "No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.")

On page 12895, V. 33, Mr. Mathewson tries to show the Court that should the relief be granted, asked for in the Bill of Complaint, that the closing of the Washoe Smelters would greatly affect the supply of copper throughout the United States and the world. He was asked the following question:

Q. I will ask you to tell the Court what is the difference of supply and demand of copper at the present time?

Over the objection of the plaintiff, Mr. Mathewson answered: "At the present time the demand of copper is *extremely great, and most of the dealers have sold in advance their entire product*; I believe the most of the copper to be produced this year is already sold—during the year 1906." (V. 33, 12896-97.)

Q. The following question I will ask you to state to the Court—if there is any source of copper supply to furnish to the world the deficit that would occur in the cop-

per production provided the Washoe Smelter was enjoined from operating?

He answers, "I know of no source from which such a quantity of copper could be obtained."

(NOTE—We think it proper at this time that the Court should take judicial notice of the fact of how willing this witness was to overdraw his imaginations and to allow to go into the records testimony that he must have known at that time was absolutely untrue. It is known to every citizen in the State of Montana, even in the United States and the greater part of the world that not less than one year from the time that Mr. Mathewson was on the witness stand that the furnaces of the Washoe Smelter were cold, the mines had ceased to operate because of an over-production of copper, and that this same witness made public statements to that effect.)

On page 12901-2, V. 33, we will now take up the knowledge of this witness of the conditions existing in the Deer Lodge Valley as shown by the records. Mr. Mathewson was asked the following question:

Q. I will ask you to state whether or not you are familiar with the general conditions in Deer Lodge Valley?

He answered, "That he was more or less familiar with them—that he had made frequent trips in the valley. States that he did not know many of the farmers by name but knows a good many of the ranches. Have been on some of them several times. Since 1903 his attention has been called to the matter when the smoke question first came up—"then I began to pay attention to the conditions of the valley."

On page 12902-3, V. 33, states in the year 1903 I noticed a great many animals had died and since that time I have

noticed that very fey animals, comparatively, have died.

In reference to the crop conditions states that he has observed the *outward* appearance of the crops—the general appearance of the crops; that he had observed the crops previous to 1903—that he had studied the question extensively, *had engaged numerous experts to assist him in the work*—have studied literature on these subjects, and I visited a great many of the ranches a great many times in regard to finding out just what was going on. States his opinion is based on his visits to the different ranches in the Deer Lodge Valley, particularly the ranch of Walter Staton, which ranch I visited several times at the request of Mr. Staton, and states his visits were to the ranches not far remote from the Smoke Zone, for the sake of comparison to the vegetation on the ranches with the conditions on the ranch of Mr. Walter Staton.

States on page 12904-5, V. 33, that he observed the crops in the valley on various ranches and noticed their conditions in a general way, and states from the information and knowledge as gained from these investigations to form an opinion as to whether or not there has been smoke damage.

On page 12905-6, V. 33, gives it as his opinion that since the large stack of the Washoe Smelter has been in operation the damage to live stock and crops in the Deer Lodge Valley is inperceptible and believes there has been no damage.

(NOTE—We will ask the Court in all fairness if Mr. Mathewson could believe what he swore to, and did he mean it when he stated in his testimony on page 12903, “I have engaged numerous experts to

assist me in the work—I have studied literature on the subject, and I have visited a great many of the ranches a great many times just to find out what was going on,” when he knew the same experts engaged by him to investigate the conditions in the Deer Lodge Valley had reported to him these facts that the same conditions existed in 1904-1905 as had existed under the short stacks. Would like further to ask if it was not under his instructions that no joint investigations be carried on between these same experts and the experts for the Farmers’ Association for the reason that it would be then clearly shown that the same condition existed. Wasn’t it through his instructions that his attorney, Mr. Shores, and his purchasing agent, Mr. Dunlap (and here let us call the Court’s attention to the record all the way through, showing that Mr. Dunlap was the duly authorized agent of the Defendants, with, apparently, as much authority, if not more, to deal with the farmers than Mr. Mathewson himself. It also shows by nearly all of the receipts for the demand of damages made in 1902 that Mr. Dunlap was more than instrumental in making the settlements and paying the farmers for their damages at that time than was Mr. Mathewson) instructed Dr. Doremus, Deft. Wit., to refuse to allow Mr. Callin and Mr. Staton to examine samples taken from the Callin horse, as sworn to by Deft. Wit., Dr. Doremus, on (V. 40, 15883), when the following questions was asked him):

Q. Going to your autopsy on the Callin horse, I will ask you to state if you did not refuse to proceed with your autopsy on the Callin horse when Mr. Staton and Mr. Frank Callin were present?

A. I refused on the ground that I was acting as an agent and the autopsy was stopped until Mr. Dunlap and Mr. Shores came back to the ranch and the matter was then turned over to them for their decision. I did not feel that

I had any prerogative in the matter. Mr. Shores and Mr. Dunlap did come back to the ranch and refused to let Mr. Staton and Mr. Callin witness the autopsy on this animal, and it was burned immediately. *If I told Mr. Dennis Callin not to let any one take a sample of the animals I told him that Mr. Dunlap had so given me instructions. I was merely acting as an agent all through this matter.*

DR. DOREMUS.

In answer to the question, "Did Mr. Staton invite you to go to his herd and kill any of the animals you wished for investigation? (V. 40, 15884.)

A. *He may have; I don't recollect certainly. It wasn't for me to accept or decline; it was for the Company to indicate what they wished me to do. (V. 40, 15885.)*

(NOTE—Would further ask in all fairness if Mr. Mathewson did not know when Mr. Soren R. Beck went to his agent, Mr. Dunlap, as shown by the record of the testimony of Soren R. Beck (V. 8, 2989), when the following conversation took place, as sworn to by Mr. Beck: "I had a conversation with Mr. Miller. He is employed by the Washoe Smelter. Mr. Miller opened some of the sheep and took away a liver and heart. I went up to Mr. Dunlap and told him what was taking place and tried to get a settlement out of him, but it seemed there was no way to do anything with him. I tried again in June; also again in December and I think the 30th of November. Mr. Dunlap told me 'if it was not for the balance, or the others, I don't know which, *he would not mind paying me something.*'" But he said, "*if he paid me he would have to pay two hundred; after he was done with me there would be one hundred and ninety-nine standing from the gate up to his office.*"

(NOTE—Don't this clearly show that this investigation was made by one of these same experts or men

employed by Mr. Mathewson whom the Court must presume gave him instructions as to the conditions existing in the Deer Lodge Valley, and couldn't Mr. Mathewson make the statement that after this witness, Soren R. Beck, as the record will show, lost 677 sheep, that he drove into Deer Lodge Valley, in two or three days died from poison—that the loss of stock in Deer Lodge Valley is imperceptible.)

(NOTE—Further call the Court's attention to the evidence of Dr. Knowles, Comp. Wit., on page 2247, V. 66, when he states he saw more evidence of smelter trouble in 1904 than he did in 1903, but that the conditions of early 1903 were worse than in 1904.)

(NOTE—Who is Dr. Knowles? State Veterinarian who was employed by the Defendants' Company in 1903 to investigate the conditions existing among the live stock in Deer Lodge Valley, and to make his report to the Company. Upon his report, accepted by the Company, over \$300,000 in damages were paid to the farmers of Deer Lodge Valley, and what would have been his report if Mr. Mathewson had employed him to investigate the conditions of 1904? Certainly, under his testimony, it would have been the same report. Didn't Mr. Mathewson well know if he had come to believe him in the first place, why should he evade him in the second place, or did he not know similar conditions existed in the Deer Lodge Valley to know that Dr. Knowles would have made a similar report to him for the year 1904?

Further we would like to ask the Court, shall we entirely evade the records when on page 1744, V. 55, it will show that Dr. Cheney was employed by the Washoe Copper Co. on October 1, 1904, and one year from that date on page (1747, V. 5, it will show Dr. Cheney received his discharge from said company, and the Court will remember that during his visit through the valley in August, 1905, Dr. Cheney, who was then in the service of the company, called the

Court's attention to the sore noses and to a paralytic mare of Eph. Staffanson's—that he advised this witness of the true conditions existing in the Deer Lodge Valley, and wasn't he one of the experts mentioned by this witness who was empowered by the Defendants' Companies to investigate the conditions and to make a true report, and Dr. Cheney also states on page 1759, V. 5, that he never gave out any treatment for sore noses except a preparation that the Defendant company prescribed, but he had advised parties to remove their stock from the pastures. The records will show that Dr. Gardiner, Deft. Wit., commenced to work for the Defendant company in June, 1905, and was in the employ of the company at the same time that Dr. Cheney was and what conclusion or presumption can the Court arrive at other than that Dr. Gardiner and Dr. Cheney, both being in the employ of the company at one and the same time, that the one who gave a report that would be more favorable to this witness would be the one kept in their employ for the purpose of testifying in this case and isn't the presumption conclusive that Dr. Cheney, giving them the direct facts in the case, was no longer wanted by them and was discharged in October, 1905, while Dr. Gardiner was kept and put in hundreds of pages of typewritten testimony to this Court, which received very little credit by the Master, as all his findings of facts was against the testimony of Dr. Gardiner. We also find on page 21404, V. 54, the evidence of Evan Evans, when he states in his testimony that he was told by Mr. Welsh, Secretary in the office of Mr. Dunlap, that if he moved his cattle back on to his ranch that he would move them back at his own risk, as the ranch was poisoned. This was the year 1903, when Mr. Mathewson knew that they intended to put in this large stack, as he has sworn to was for the benefit of the farmers, *why then was men in his immediate employment warning farmers not to come back into the Deer Lodge Valley, and if they did so they would do so at their own risk?*

It will be seen by the records that Mr. Welsh witnessed nearly all of the receipts that were made by the farmers to the Company were for losses of stock and vegetation in 1902.)

(NOTE—Why did not Defendants' counsel call Mr. Dunlap, Mr. Welsh and Mr. Shores and dispute this testimony if they did not think it was a fact as above stated. These men were at all times within the reach and could have been put on the witness stand without any inconvenience to the Defendants' company or their counsel. Only one conclusion to draw—that they new the witness who had testified to these matters was testifying to the truth.)

On page 12905, V. 33, Mr. Mathewson was asked on cross-examination if he knew how the live stock was generally kept in the Deer Lodge Valley prior to 1903. Answers, "Only by hearsay." Was asked if it was not a fact that prior to that time live stock, cattle and horses were allowed to run out the whole year on the ranches, stated he didn't know except by hearsay.

On page 12906, V. 33, was asked the question if it wasn't a fact that after the smoke period in 1902 and 1903 principally all of the stock had been stabled most of the year, and in fact all of them were fed hay during all the season with the exception of a very short period in the summer? Then was asked the question if he did not think there had been a change in the way of keeping horses and cattle in the valley. Stated that he could not say, as he did not know the condition prior to 1903. Was then asked if he could tell how many cattle there was in the Deer Lodge Valley in the Smoze Zone at the present time?

A. I couldn't give any estimate; I don't feel competent to give any estimate.

Was then asked, "Would you say that there is one-quarter as many in the Smoke Zone as there was in 1903, or prior to 1902 and 1903, the Smoke trouble?"

A. I will say there is fully one-quarter.

Was asked the same question in regard to horses and stated he could not tell because he didn't know how many there was in 1902. Should judge there would be fully one-quarter as many.

On page 12907, V. 33, was asked to state if he had examined and observed the crop conditions in the Deer Lodge Valley since 1903 as to the grain, oats and wheat. Stated "Yes, he had observed the fields of grain in a general way; noticed them that way when driving along the road and looked over into the ranches and had gone into some of the fields."

(NOTE—About the same observation given by Prof. Blankinship, Deft. Wit. In the five months he was employed by the Defendant company he spent 25 hours in the Deer Lodge Valley examining conditions existing there. On page 12908, V. 33, was asked what was his impression as to the acreage of grain raised in 1903 as compared with this year in the Smoke Zone? Answered, "He would think there was little less this year than in 1903. Would not care to venture an opinion.

Was asked if there was two-thirds as many acres of grain this year as in 1903. Answered, he would not care to venture an opinion. Was asked if he thought the yield of the wheat that took the price at the Deer Lodge County Fair last year only went 15 bushels to the acre and no more? Stated, that he didn't know. Asked if he would consider this year the yield per acre would be as great as last year. Stated he didn't know—thought it would be the same thing.)

On page 12911 was asked if he was prepared to say how this year's crop yield in grain compared with 1903 per acre, answered, "No, I don't know enough about it to say." We asked if he would agree with the statement of 1906 that there would not be a raise of 60% with that raised in 1903 according to the threshing returns. Answered he wouldn't venture an opinion on the subject.

Was asked if he would agree with the Association that the grain yield in 1902 to the present time will average from two to 5 bushels per acre shrinkage each year, the yield per acre, on an average through the Smoke Zone? Answered on page 12912 that he would not agree with that statement unless furnished with particulars as to how the water was put on the land.

Was asked the question if it is not a physical fact that the threshing returns will show that such has been the decrease, answered I couldn't either affirm nor deny it.

Was then asked the question if that is true that these conditions existed, that not more than 50% of the grain was raised in the Deer Lodge Valley in 1906 that was raised in 1902, and that there had been a constant shrinkage per acre yield of somewheres over 2 to 5 buschels per acre to what cause he would attribute it to with his knowledge of Deer Lodge Valley?

Stated he would attribute it to a lack of water or cultivation. The cultivation included fertilization—lack of fertilization.

(NOTE—This conclusively shows that this witness like other witnesses for the Defendants Co., will make broad sweeping statements as to the conditions existing in Deer Lodge Valley, such as—"there is no loss of stock, the grain is just as good as ever," and when

asked to tell how they know invariably claim that it is something besides the conditions that exist there—lack of water, fertilization or something, and show as Mr. Mathewson does, by his testimony, that he is absolutely ignorant of any of the conditions that existed prior to the smoke trouble and tries to be ignorant to the conditions existing there now.)

If Mr. Mathewson knew the farms in the Deer Lodge Valley as well as he swore he did on Direct he would know that all the farms are well watered, that there has never been any complaint as to water, and there is only one man who claimed he did not have enough water—George Parrott—and he states the Company took it away from him.

On 12915, V. 33, was asked the question as to what he had read on smelter smoke damage, and stated he had read a number of translations of German Authorities on smoke damage. The translations were made by some of his employes at the smelter in Anaconda; also had read a pamphlet published by James K. Haywood, one of the United States Government Experts; also read a pamphlet published by some one at Salt Lake—forgotten the name. Thinks it was published by the Agricultural College.

Asked if he did not know the president of that college was the president of one of the smelters or one of the directors, stated that he did not know—couldn't say. Thinks this was about the extent of the reading on this subject. Claims there is very little literature to be had on the subject. Was asked the question if there is any change in farms, any substantial change in the men who had charge of the lands from 1903 to 1905, answered on page 12976 that there is some minor changes. One that I recollect is Section 16 which was formerly school land. Claimed that

land was purchased by the Washoe Co.; that the Company put their own employes on this land to operate it and mentioned one or two other changes-claimed he couldn't recollect, but states there was nothing, in his opinion, that would generally change the farming condition. Practically the same farmers owned and farmed the land. Was asked then how he accounted for the poor farming; if they had all changed in two or three years from good farmers or at least farming poorer right along, answers on page 12917 *I account for it by what I consider to be their cupidity*, having been aroused by the settlement made with them by the Washoe Co. They got what was known as "easy money" and they wanted some more.

(NOTE—This will clearly show the bias and prejudice of this witness, also shows the interest he is taking in the suit, and should clearly show to the Court that with such a man as Mr. Mathewson at the head of the Defendants' Companies, it is no wonder that they would rather go into litigation than to try and amiably adjust or settle with the people that had been ruined in the Deer Lodge Valley.)

John Gillie, the manager of the mines in Butte, and one of the Defendants witnesses stated on page 13118, V. 33, that *the claim of the farmers for damages in 1902 was found to have merit and was paid.*

The record also shows that Nick Bielenberg, Walter Staton and Mr. Kreider testified on the witness stand that they were willing to give the Company a release of all damage done them in the years, 1904-5-6, if the Company would agree not to any further molest or injure or damage their property. This doesn't show that they were after easy money.

Mr. Mathewson, further, in his testimony on page 12921 claims that he did not know the losses of 1902, but knew in 1903 there were lots of carcasses lying around on the ranches.

(NOTE—Does that indicate “easy money?”)

Was it easy money to know that the Company only paid about one-half of the value of these stock that he saw the carcasses of lying around on the different ranches.

Mr. Mathewson was asked to state what particular farmers he had observed *farming in the Valley, and names only Walter Staton. Been on the Bliss ranch and Warm Springs Asylum Ranch Leavengood Ranch, Parker Ranch, Stuckey Ranch, and Nick Bielenberg's.* Claims that he was on Nick Bielenberg's about one-half dozen times in the last three or four years. On page 12919 states he thinks Mr. Bielenberg is farming about the same as he has always farmed since I have known his ranch. Was asked the question, “What would you say about Dr. Warren at Warm Springs—is he farming better or worse?”

A. *HE IS FARMING BETTER THAN HE FORMERLY DID.*

States that Thomas Parker is tending to his ranch properly as far as he noted. States the Bliss Ranch looks as if it had been neglected largely; just allowed to grow as it would; wasn't sure whether it had been rented or not.

States that he has not made any particular investigation in the Deer Lodge Valley as to the number of acres in cultivation from year to year. Has not paid any particular attention to the crop yield from the threshing returns since 1903, just in a general way.

(NOTE—The above shows he is not competent to testify as to agricultural conditions.)

States that he would not be in a position to say as to the grain yield of Deer Lodge Valley known as the Smoke Zone in the last three or four years only in a general way. States he would not like to go into the particulars of it. Claims that since 1903 he has had some knowledge of the sickness of live stock, horses and cattle in the Deer Lodge Valley. States he has employed various veterinary experts to look into the matter—that he employed Dr. Cheney. (V. 33, 12920.)

(NOTE—It will be shown by the evidence of Dr. Cheney that page 2988-9, V. 6, he stated to this witness the truth about the conditions existing in the Deer Lodge Valley after he went to work for them in October of 1904 and that in October of 1905 his services were no longer required. WHY?

As to his personal knowledge of the sickness of the animals in Deer Lodge Valley is limited to his visits to these ranches from time to time. Just a superficial examination of the stock in a general way. States he is not a veterinarian. All that he could say is that they looked well or did not look well. (V. 33, 12921.)

Claims that he made an examination of some animals belonging to Walter Staton, just a superficial examination, of certain things that he asked him to look at. When asked the question, "and that is about the extent of the examination you made?" (V. 33, 12921.)

A. No, I inspected certain stock that I have had my men feeding with special food. I have looked at them from time to time. I have been present when autopsies were made

on animals that have been treated with *certain* food, and in the presence of veterinarians that were competent to report as to the exact condition. *I just casually glanced at them.* Says he is not competent to hold an autopsy and report the conditions. Asked if he did not also visit Walter Staton's ranch in 1903 and 1904. States he cannot recollect visiting his ranch prior to 1904. (V. 33, 12921.)

(NOTE—Here the witnesses recollection fails him as to one of the important features in this suit, namely; damage to stock and vegetation, when still from memory he can give the numbers of smelters he visited, the kind of ores treated, the number of tons each treat, and hoy much the ores carried in sulphur, copper, etc.)

States he bases his opinion on a greater loss in 1902-3 by the carcasses he saw laying around the ranches as heretofore stated. (V. 33, 12922.)

Asked the question, "isn't it a fact there has been greater loss since 1903, I am going to cover the period of 1904-5-6 compared with the number of live stock in the valley, than there was in 1902-3?" (V. 33, 12923.)

A. "I don't think so."

(NOTE—Here his memory fails him again. States he cannot give any authentic statement as to that only the mortality in the Valley from his own employees. States he don't know of any settlement that has been made with any of the farmers since 1903. States that if any settlements had been made he would have known it.) (V. 33, 12922-23.)

Was asked to state if any claim had been presented to him from the farmers from time to time, residing in the Smoke Zone for damages occurring since July 1, 1903? (V. 33, 12923.)

Answers that he doesn't think any definite claims have been made. That there has been some talk of claims but he did not remember any definite claims being made. When asked if several farmers had not come to him and asked for settlements or negotiations leading to settlements and he had always directed them to the Court House.

The question was afterward amended to read as follows: "I will ask you if it is not a fact that a conversation of Walter Staton along about the fall of 1904 in which Mr. Walter C. Stanton asked you to make a settlement with him; he made a general statement to you of his damage; that you said you would not settle with him for if you did that you would have to settle with all the farmers in the region of the smelters or in that section of the Country. Answers that he don't recollect any such conversation. (V. 33, 12924.)

(NOTE—Again a failure of memory.)

States he did not remember Bart Para coming to him (one of the Farmers of the Deer Lodge Valley.)

Was asked, "do you recollect directing any of these farmers who called on you to go to the Court House when they asked you for a settlement or negotiations. A. I recollect some conversatin I had with some farmers, but I don't recollect the farmers. *These gentlemen said they were damaged, as I recollect, and I told them that we paid damage when they proved them. If they could prove they had been damaged by our smoke that we would pay them.* (V. 33, 12924.)

Q. *That is, proved in Court wasn't it?* (V. 33, 12924.)

A. After their insisting on a settlement or something of that kind I don't remember exactly, I told them that

our investigations led us to believe that there was no damage, and if they had damage *they would probably have to prove it in Court; I believe I made such statement to some; I think, I don't remember the individuals.* (V. 33 12924.)

Q. Is it not a fact that you have not considered the settlement of any claims for damages from the farmers that were ruined since July, 1903?

He answers, "We have investigated some claims. They were not former claims as I understand it. There were some farmers that said they had been damaged in a general way. They didn't say they were damaged so many horses or cows or anything of that kind, but we investigated the ranches and we came to the conclusion that there was no damage.

(NOTE—We think the witnesses memory again failed him for just a few pages previous he only named being on five or six ranches in the last three or four years. He was then asked the question if it was not a fact, to his own knowledge, that 107 claims for damages—itemized statements were presented to Mr. Shores on March 4th, last year, for settlements and that his attention was called to them, in which the farmers set forth, specifically, every item of damage with the amount of claims they made on the smelter for damage, and that it was presented to Mr. Shores on the fourth day of March, 1905, and that Mr. Shores refused to act on that until he had consulted with the witness.

A. Asked if he was referring to the claims in this case.

States that he don't remember Mr. Shores presenting them to him, but he does remember that a list of claims that was filed in this case or some case are in different Courts. Claims he doesn't remember now just where. States that he does remember some 107 or thinks it was

107 claimants for damage—*yes, he remembers that.* (V. 33, 12925.)

Q. Don't you remember 107 claims being presented for settlements and Mr. Shores called your attention to it on the "phone," and asked you to set a time to consider these 107 claims for settlements, that there was nothing talked about a suit then—no suits filed.

He answers, "I don't recollect the details of that discussion."

Q. Do you remember anything about it.

A. Oh, I remember these claims.

(NOTE—His memory gone again.)

Q. They were presented for settlement, aggregating over a million dollars; isn't that a fact, before this suit was filed or before any suits were filed? (V. 33, 12936.)

A. Well, I don't remember the exact date; I remember what you refer to, these claims that started the suit.

Q. *Well, they were presented prior to the starting of the suit?*

A. *Yes, particularly, I remember one of Walter Station, which was an offer to sell his place to us.*

Q. Didn't Nick Bielenberg present one also?

A. I don't recollect his.

Asked if all the farmers of the Farmers' Association did not present claims at that time. (V. 33, 12926.)

A. I believe they did through our legal department, but I don't remember seeing them.

Q. Do you know whether any settlement was ever made for these claims or not?

A. I don't think any settlements was ever made for them. (V. 33, 12926.)

(NOTE—And still he claims there had only been some talk to him from some of the farmers regarding damages since July 1, 1903, when the evidence of Walter Staton minutely gives the claims of all these claimants. The statement that the farmers *had agreed to arbitrate their claims and upon the request of Mr. shores it was agreed that no more farmers should be taken into the Association until such claims had been considered by the Company.*)

On page 306 admits 10 tons of arsenic trioxide per day going out of the stack.

In answer to the question: "I will ask you whether you have given advice and taken the position as to the fact that there was no damage, and if that were shown to be a wrong position, would it affect you with the Company,—would it affect your position?"

A. There is no such understanding that I know of between my Company and myself. If they are granted their injunction (meaning complainant) the position ceases,—the whole business closes up.

Q. An injunction would be granted contrary to all the advice you have given your Company in respect to these settlements. And in respect to the claims of the farmers?

A. Do you mean that I have advised my Company that the Farmers' claims were not just? *I have told my officials whenever I have been asked on the subject that I consider the claims groundless.* (V. 33, 12928.)

Q. *Under your advice you are in charge there,—*

A. *I would strongly advise them not to settle.*

Q. And there would not be any claims settled unless they were taken into court and judgment secured?

A. Not at this stage in the game. We have made

enough investigation to firmly establish me in that opinion. (V. 33, 12928-29.)

Q. I am asking you if it is not a fact that no settlements will be made now under your instructions?

A. So far as I am concerned there will be no settlements made so far as my influence would go,—I would strongly recommend that *no settlements be made*; however, I am not the whole thing. (V. 33, 12929.)

(NOTE—On page 12,927 to 12,929, V. 33, inclusive, Mr. Mathewson's testimony shows that he has used all his influence in preventing the settlements of any claims of the farmers of the Valley, notwithstanding this evidence, Judge Hunt, in handing down his decree stated they had offered to purchase the ranch of Mr. Fred Bliss, *and others.*)

The Court's attention, ere this, has been called to how they endeavored to purchase from Mr. Bliss, on page 588, V. 2, the Record shows that Mrs. Bliss tried to settle with the Company for damages prior to any action being brought. She was told that she would have to sue for it, bring suit. She had no agreement with them, and could not get any satisfaction. They only offered to purchase Mr. Bliss' Farm after he had closed his case in chief, and there isn't a single case cited in the record where they ever offered a single member of the Farmers' Association one cent or even attempted to purchase a single ranch outside of Mr. Bliss', and Judge Hunt, when he made the above finding that he had offered to purchase others, has not a single line of evidence to support his findings, and the only reason that they offered to purchase Mr. Bliss was that by so doing they would throw the case out of Court.

In answer to the following question: "How much of

the time does it take you to refine what you put through your roasters?" (V. 33, 12960.)

"In other words, how much of the time does it take you to do your refining work, as compared with the treating of the flue dust." (V. 33, 12960-61.)

He answers: *We run the refining furnaces about ten days in two months,—that is about the proportion,—something like that.*

Q. What becomes of the flue dust during the suspension of the roasting furnaces in which you roast the flue dust?

A. It accumulates in the main flue.

Claims that the flue dust amounts to about 170 tons a day.

Mr. Mathewson claims that thousands of dollars had been found in the flue dust surrounding the old works; that a good many heads had been employed in scraping the hills and that some has been taken to the Washoe Smelters and treated and that the flue-dust and scrapings from around the old works was very rich. (V. 33, 12946-47.)

Claims he commenced scraping around the old works sometime in the year 1902, and believes the scrapings of the flue-dust and treating of it led him to believe or demonstrated to him there was a great deal of value done out of the old works. States it was not the principal reason why he built the dust chambers of the new works, but admits that they proved very economical. (V. 33, 12947-48.)

Claims that the construction of the flues and dust chambers have proved a good investment and irrespective of the Farmers or any other consideration is a good investment, and a practical one. (V. 33, 12948-49.)

To the following question: "Is it a fact that you were aware prior to the constdution of the dust chambers of the big flues that a good deal of value was going out or had gone out f the ld wrks?" He answers: "We had sme idea of it; we didn't realize the full extent of it only when we had extended our investigation over a year or more; states they were very useful and economical. They are profitable and save money."

On page 12949-50 states he cannot say he separates absolutely all of the flue-dust from the smoke, but he is satisfied that they get the bulk of it. Has no accurate method of knowing what amount of solid particles get out in the smoke at the present time. (V. 33, 12949-50.)

Claims that the flue-dust to a certain extent increases with the increase of the amount of ore treated, but it varies also with the conditions of the ore coming into the plant. (V. 33, 12950.)

(NOTE—The above evidence will show to the Court that the money expended in building the big chimney and flues has been profitable *to the Defendants' Companies in a commercial way*. If they had made a failure by their experiments in reducing the harm to the surrounding country as was complained of in 1902, as *Prof. Blankinship, Defts. Wit., stated that he understood the Company had fully paid themselves for the cost of the erection of the big chimney and flues by savings of the flue-dust.*)

Mr. Evans moved to strike this statement from the records as hearsay, which was granted, although he (Prof. Blankinship) was one of the Defendants' Witnesses.

When asked the question if the fumes should carry flue-dust to the big stack if it would be carried into the atmosphere as a general rule. (V. 44, 12952.)

Answers, "As a general thing if it once enters into the stack it will go out of the stack into the atmosphere.."

In speaking of the Great Falls Smelter, was asked as to whether or not any farming was done in the immediate vicinity of the Great Falls smelter? (V. 33, 13055.56.)

Answers, that he thought some stock-raising and there were some small gardens there.

Asked if he knew if they had any trouble or made any settlements with the owners in the immediate vicinity of the smelters?

A. I have heard they had some trouble; didn't know if any settlements had been made by the Great Falls Smelter with the farmers, but states *the ores smelted there are substantially of the same character as the ores smelted in the Washoe Smelter.* (V. 33, 13055-56.)

On Re-Direct Examination claims he never had any positive knowledge, that he never counted any of the stock in the Deer Lodge Valley. (V. 33, 13058.)

Admits that he told Staton to seek re-dress in the Courts. Etates he had two or three controversies with Staton—that the first conversation took place, as he remembered it, in 1904; then he told me in a general way that he thought things were going along very nicely since the new stack was built and he didn't think there would be much trouble. I stated, "To be sure, if there was any trouble to let me know as I wanted to see what this trouble is and he told me he would, and I think about the month of May he called *me up and said the smoke had been down on his place the night before and raised havoc; that his horses had sore noses caused by smoke and to come down and see it.* (V. 33, 13059-60.)

(NOTE—Here the witness gives all the minute details of the conversation, even remembers distinctly that Mr. Staton used profane language in emphasizing some of his remarks. They examined horses for sore noses and found none.)

Claims that Mr. Staton again called him up in June. They went down and examined the lower field. Thinks Mr. Dunlap and Mr. Miller were with them. Details part of the conversation at that time. (V. 33, 13062-63.)

(NOTE—Apparently his memory has recuperated since his Direct and Cross-Examination and has come back on Re-direct for in answer to the following question: “Mr. Mathewson concerning your disposition of the amount of claims of the farmers in the Deer Lodge Valley, for what your recommendations have been on the subject, I will ask you to state why you recommended that no further claims be paid? (V. 33, 13063-64.)

He answers, “that the reason he advised no settlements with the farmers that claimed damages from the smelters was that he carefully investigated their stories and frequently went down to the ranches himself to try and find out if any damage had been done; he employed parties also to make investigations—a great many experts, and sent them around to different points in the Valley where damages was claimed and from all these investigations he became convinced that the claims were unjust.” V. 33, 13064.)

(NOTE—Again contradicting his testimony on Cross Examination: On page 13065 was asked the question: “Will you state whether or not you had taken a position with the Company, that you would not settle these claims or advise a settlement, irrespective whether the Company had in your opinion caused the damage or not?” (V. 33, 13065.)

He answers, "I certainly would not advise the Company to do anything unjust. I would certainly have advised them settled if I had been at all satisfied that there had been any damage."

(NOTE—This clearly contradicts his statement on page 12929 when in answer to the following question, "I am asking you is it not a fact that no settlements will be made under your instructions?"

A. *So far as I am concerned there will be no settlements made. As far as my influence will go, I would strongly recommend there will be no settlements made, however. I am not the whole thing. (V. 33, 12828.)*

(NOTE—Mr. Mathewson, like a good many witnesses for the Defense after making these sweeping statements on the witness stand would come back on re-direct and try to patch them up, seeing or thinking they saw the mistakes they had made in testifying to evidence that was hurting their side of the case, when sufficient time had intervened for consultation with those that could show them that they should not have testified the way they did, although it might have been true.)

As will be shown on page 13072 when Mr. Kelley put the following question: "Counsel asked you a question, if it wasn't a fact that the gas at the Anaconda stack traveled with ten times the rapidity that the gas at the A. S. & R. Co.'s plant at Murray travelde.

MR. CLINTON: He stated he didn't know. Has he got new information since yesterday?

MR. KELLEY: He may have thought long enough to have perceived the absurdity of the insinuations contained in your question.

Mr. Mathewson answers, "I think that is out of the ques-

tion to believe that the gas at the Washoe in the big flue is traveling astfer than the gases in the Murray Plant of the American Smelting & Refining Co.

(NOTE—Still the day before he claimed that he didn't know.)

On page 13073 was asked the question: With reference to the smoke stream, Mr. Mathewson, you say you have perceived it, have observed that at times it lights immediately upon the base of this stack.

Answers, I have seen something, apparently, coming right down to the base of the stock from the top.

(NOTE—We ask the Court to consider this, "that he has seen something, apparently coming right down to the base of the stack from the top and later on by the evidence will be shown that he is trying to evade the question of smoke settling immediately around the stack, that he only seen something coming down.)

Q. Do you know whether or not the Company has kept a general and continuous observation of the smoke with reference to the wnd currents, velocity, directions, etc? (V. 23, 13073-74.)

A. Yes, sir. We have employed men for that purpose.

Q. You have not given them.

A. I have not the data here, no, sir.

Q. Aside from that, I wish to ask you, upon your general information or calculations what is the usual distance from the stack that the smoke alights, that you have observed?

A. In my observation, since the stack was put in operation, the smoke usually travels across the valley and over the hills on the other side of the Valley.

Q. When it does alight to the ground, when what distance from the smelter would you say that this is generally done?

A. When it does strike the Valley it usually strikes it two or three miles from the stack.

Q. And from that on further?

A. Further along.

Q. I understand you to say that it doesn't come down generally within two or three miles, closer than that? (V. 23, 13074.)

A. Two or three miles is the usual place that it strikes, within two or three miles of the stack.

Q. Do I understand it usually strikes at that distance, merely at times when it does strike the ground, but doesn't strike closed than that?

A. That is my opinion, no observation that when it does strike the Valley it strikes two or three miles from the stack, two or three miles as a usual thing.

(NOTE—Smoke hitting 2 miles away shows why the Deft. attempts to raise lawns at the smelter works.)

(NOTE—We cannot understand why the witness wishes to shange his testimony in regard to seeing the smoke come right down to the base of the chmney, without it is to dispute the Defendants' own experts, Prof. Traphagen and Prof. Blankinship, who both claim (Prof. Traphagen, 13741, V. 35, and Prof. Blankinship, 15106-7, V. 38), that they have found no commercial damage upon Deer Lodge Valley from smelter smoke except perhaps the Walker Gulch Garden crop which was somewhat diminished, in other words, usng the words of Prof. Traphagen, "there was no acid damage to vegetation in Deer Lodge Valley, except Walker Gulch," and the language of Prof. Blankinship, "that he had not found any commercial

damage upon Deer Lodge Valley from smelter smoke except perhaps the Walker Gulch Garden crop which was somewhat diminished.”

(NOTE—The Court will remember where Walker Gulch garden is—almost under the smoke stack and the garden that Mr. Dobins claims he had fine crops on, except the frost killed the beets, carrots, etc.)

On page 13084, states that the reason he thought Staton's vegetation was hurt by hail there had been a hail storm in Anaconda, he thought about the middle of May, 1904, a few days previous when he was going down to Staton's place.

Referring to his memorandum he said it was the 18th of May.

Was asked the question if he was acquainted with a Doctor by the name of McGregor in Butte? Stated he was acquainted with hm. (V. 23, 13085.)

Asked the question if he did not go over Staton's ranch in July of that year and make an investigation of horses? Stated he didn't know.

Asked if he did not make a report to him (meaning the witness). Witness answers, “I don't recollect.”

States that Dr. McGregor was a horse doctor living in Butte.

On page 13085 asked if he did not send for him at one time? States he sent for him several times.

Asked him if he didn't have him (meaning the Doctor) investigate tStaton's place. A. I don't recollect any particular time. I sent for him several tmes.

When asked the queston if he did make an investigation, did he make a report to you?

A. *Not in writing.* I don't recollect any report from

him, he may have made a report, but I don't recollect about it.

Asked the question didn't he report to you that the stock on Staton's ranch were suffering from smoke injury? States, "I couldn't tell you; I don't think he ever made any such report to me.

(NOTE—This was on Re-Cross Examination and the Court will notice how quick his mind fails again to things that he doesn't wish to remember.)

Asked the question didn't Dr. Knowles the State Veterinarian, make a report to you in October, 1904, after having made an examination of Staton's stock in connection with Jesse Miller and Dr. Cheney, that Staton's stock was suffering from smoke poison? V. 33, 13085.)

Answers, he don't think Dr. Knowles ever made a report to him.

Q. Did he tell you so in a conversation that he had with you in October?

A. I doubt that very much. I don't think he ever spoke to me about it.

Q. Where would this report go, wouldn't it go to you if he did make a report?

A. I think not. If a report had been made by Dr. Knowles it probably would have gone to Mr. Dunlap or to the attorneys in Butte.

(NOTE—The Court will notice how he places the responsibility of the investigations that were coming to him, that appear to be unfavorable, to Mr. Dunlap or the attorneys in Butte. Still in his direct Examination he states that he had investigators through the Valley to ascertain if anything was being injured and to make a report to him.)

JOHN GILLIE, Defts. Wit. :

Is a mining engineer. Claims he has been connected with the Amalgamated Company directly; has been superintendent of Butte & Boston Consolidated Mining Company over six years and was assistant to Mr. Scallon during past six years and was assistant to Mr. Scallon during part of the time, and also has been general superintendent of the mines of the Amalgamated Copper for over three years last past. (V. 33, 13086-87.)

Claims that he is familiar with the smelters and with the conditions that are maintained at the smelters. (V. 33, 13088.)

States that ores from the Butte mines are smelted at the Washoe Smelter, Anaconda, Montana, the mines that are owned or controlled by the Amalgamated Mining Company except the Boston & Montana Company; part of that is smelted at Great Falls, Montana. (V. 33, 13088-90.)

Mr. Gillie was asked the following question: "Do you know whether or not there is at this time stored or in reserve any supply of copper that could be used to supply the deficit that would be caused by the suspension of operation of these mines mentioned until for instance, a new works could be built to reduce the ores?" (meaning the Butte properties owned by the defendant companies.) (V. 33, 13109.)

"A. No. Sir, I know that the United Metals Selling Company which sells the product of the Amalgamated Company often *plead* with a customer to cut down the amount of their order in order to keep their general customers supplied. Quite recently one customer in Rome.

New York, asked for a million pounds at the going rate of nineteen cents and they asked him to take half the amount if he could get along with it, in order to keep some other customers supplied. That is the way that the supply and demand is at the present time.” (V. 33, 13109.)

(NOTE—As in Mr. Mathewson’s testimony, can this testimony of Mr. Gillie be true? If the Court has a right to take judicial notice, how soon after these remarks were spread upon the records in this court was the furnaces of the Washoe Co. cold because of an over-production of copper in the world? And if these witnesses did not know at the time of the existing conditions, they surely were ignorant and should have so stated instead of trying to make an intelligent court believe statements which so soon proved untrue.)

Mr. Gillie claims that prior to 1883, when the works at Anaconda were erected, small portions of the ore from Butte were shipped to Swensea, Wales, and treated. (V. 33, 13111.)

(NOTE—The Court remembers that this was the same smelter mentioned by Morgan Evans, one of the Plaintiff’s witnesses, when he stated the conditions existing to vegetation and stock at Swensea, Wales.)

Claims that he went through Deer Lodge Valley in August, 1881, and that most of the valley in the vicinity of Anaconda on Warm Springs Creek was unoccupied, but does remember Levengood, Stuckey and Morgan Evans were there. and others. (V. 33, 13112.)

(NOTE—This has been disputed by nearly all of the lay witnesses for the plaintiff and the defendants, and

the Master has made a finding of fact that Deer Lodge Valley was settled prior to the year 1870.)

In speaking of the low smoke stacks at the smelter, the question was asked "So far as the smelting operations were concerned, do these stacks furnish a satisfactory outlet for the smoke and gases?" The witness answers: "They did, but caused an undue waste."

(NOTE—This answer of the witness clearly shows that the large stack and flues were constructed by the Defendants, not for the benefit of the farmers, but simply to save the copper values they had been losing out of their short stacks.)

The testimony of Mr. Mathewson, manager of the works, Defts. Wit., shows that they have recovered in metal values, principally copper, very nearly as much as the cost of the flue and stack.

The copper never did any injury to the farms of the Valley, it was the arsenic and the sulphur, and the undisputed testimony of Dr. Swain and Dr. Harkins, Comps. Wit., shows that the big stack utterly failed to stop any of these gases escaping, and the building of this stack was simply a good commercial proposition for the Defendants, but the Court will notice that the Defendants expert witnesses continually allude to flue dust, interjecting it all the while into their testimony.

Flue dust as the word is used in this case means dust caught in the flue, containing more or less metal values. The injury in 1902 was not caused by flue dust alone, but was caused by the same gases that are now being eliminated through the big stack, and the testimony of Mr. Mathewson, Defendants Witness, shows that they are re-

dueng greater quantities of ore at the present time than they ever did under the short stacks, as this Witnesses' testimony shows they investigated the claims of the farmers, and where found just were settled for damage under the short stacks.

But claims t wasn't known at the time of the construction of these chimneys; "what caused us first to change the method of the outlet of these chimneys, or the smoke and emanations, was complainant from residents or occupants of land in the vicinity of the works, alleging damage and claims of damage to crops and stock in the vicinity."

"These claims were investigated and some of them found to have merit and compensations made for a number of those claims where they appeared reasonable. It was then decided that something would be done and the present long flue in connection and the high brick stack was decided upon and the erection commenced in February, 1903, and was complete in the fall of that year. *But in making settlements in 1902 with the farmers in the Valley there and that vicinity that had been damaged, the promise was made that conditions would be rectified by July of the next year.* When it came July of 1903 we did not have the work complete. It was an enormous piece of work, involving nearly a million dollars of expenditure, so in order to keep good faith with these people, the works were shut down July 1, 1903, and remained until the flue and stack were connected in September of the same year." (V. 33, 13119.)

(NOTE—The Court will also take notice of the numerous farmers that testified that during *this shut-down crops took a new start and stock recuperated*, and, using the words of Mr. Bielenberg, one of the Plain-

tiff's witnesses: "The farmers were happy." And if the experiment of the defendant companies in the erection of the big chimney had proven as they anticipated, nothing further would ever have been heard of the smoke damage.)

Admits that heap roasting in Butte killed off the vegetation. (V. 33, 13123.)

(NOTE—If sulphur and arsenic could be driven out of ores by heap roasting in sufficient quantities to injure and kill vegetation, the same could be said of sulphur and arsenic driven out of the ores by any other process; that they would be detrimental to vegetation.)

Mr. Gillie in his testimony admits that at no time when all the smelters were running in Butte which (caused a total destruction in that vicinity) did they ever smelt the amount of ores that were being smelted in Anaconda.

States in answer to the following question: "Do you know of any smoke trouble or litigation from the farmers concerning the operation of the smelters at Butte? "A. *Not with the farmers, but with other class of people, yes. I have known the citizens of the community to go out, tear down and cover up roast heaps in connection with the Boston & Montana smelter in operation in Butte. Go out en masse. That was about ten or twelve years ago.*" (V. 33, 14148-50.)

Asked if that was the only trouble that he knew of, Answered, "*No, I have known of a man who would wait around for Mr. Couch who was manager of that company, with a gun, to kill him, because his wife had been, he claimed, killed by the smoke that was then in the city.*"

(NOTE—This answer of Mr. Gillie's explains why

more stock sicken and die in the fall in the Deer Lodge Valley than in other months. As he states as well as numbers of other witnesses for both complainant and Defendant the smoke stays down more in COOLER Weather.)

“There were discomforts to the people living there. We closed the mines in Butte upon Clancy appointing a receiver for the mine, and only resumed on a telegram from Helena. When the weather was cool the smoke settled down.

(NOTE—“All of the companies of the Amalgamated were closed, even the ones not involved in the litigation.”)

(NOTE—The only Company closed by the injunction of the Court was the Boston and Montana. (Belonging to the Amalgamated.) This Company has a smelter at Great Falls, and none of the other mines or smelters of the Amalgamated were affected by these orders, nevertheless, they closed all their mining properties in Montana and refused to open the same until the Governor of the State of Montana called the legislature together again, in special session, to pass what is known in Montana as a “fair trial bill.”)

This bill could not be passed by the regular session of the Legislature, and it was only after this session was called by the Governor, did they resume.

There was no excuses whatever for the closing of any of the properties outside of the Boston and Montana, and the only purpose for which the other Companies were closed, was intimidation, and it simply shows that the Amalgamated Co., in Montana dominates the whole State from the Governor down.

	Tons.
The capacity of the Colorado Smelter, when closed . . .	1,000
The capacity of the M. O. P. Company	1,400
The capacity of the B. & B. Company	750
The capacity of the Parrott Company	600
—	
Total	3,750

“The Anaconda smelters were closed about a year, until they built a railroad from Butte, because the one railroad wanted to raise the freight.” (V. 33, 13159-60.)

“*The reason we dismantled our smelters in Butte was that the ores could be more economically treated at the Washoe.*” (V. 33, 13160.)

Admits the defendant company have about 8,800 acres of land in Deer Lodge Valley but cannot say what proportion of it is farm land. Admits a considerable portion of it is bottom land. (V. 33, 13171.)

Was asked the following question: “You give quite a list of items of the products used by the Washoe Smelter and the company treating ores there, freights, etc., did you not?”

A. Yes, sir.

Q. Did you give how much you paid out for farming in the Deer Lodge Valley in wages?

A. No, sir.

Q. We would like to know how much you have paid out, in farming, in Deer Lodge Valley, if you can obtain it. (V. 33, 13173-74.)

MR. KELLEY: We intend to show you how much money we have made on it also. *It is one of the most*

profitable enterprises connected with the company.

THE WITNESS: If it is not furnished we will see that you get it.

MR. KELLEY: We will show you the books. I will promise to furnish the expense of that farm and the proceeds from it and describe fully everything that has been done on it.

(NOTE.—Again we will ask the Court of what assistance to the Court will be these remarks or promises of Mr. Kelley that he will furnish information as to the Company's farming operations in the Deer Lodge Valley, in helping or aiding the Court in arriving at a conclusion as to whether or not farming may be conducted in Deer Lodge Valley at a profit? We had a better opportunity of knowing what profits could be made in farming in Deer Lodge Valley than the defendants themselves with thousands of acres of tillable and grazing lands, hundreds of head of stock bought by them and placed upon these lands, unlimited money to work and improve, plenty of water, nothing lacking to have made a splendid showing, and then come into Court with clean hands and say to the Court: "Here is the net profit made by the operation of lands immediately in the path of the smoke, which will show the Court clearly that the evidence given by the farmers of Deer Lodge Valley is untrue." *But no, instead of doing so, the record is absolutely silent, except the language used by Mr. Kelley: "We will show the most profitable enterprise connected with the Company."*

On the other hand, does it not clearly show that the evidence that they had within their own grasp to furnish the Court *has been buried and excluded* for the purpose

of misleading the Court of the true conditions that exist in Deer Lodge Valley?

Was asked the question if he knew how much flue dust is recovered; answered, "About sixty tons a day, so that amount of sulphur does not get out; however, that is in a mechanical state, that is in a combined state that is settled out. (V. 34, 13200.)

Q. Allowing that, it will be only about two tons if the flue dust carries three per cent. sulphur, as you stated?

A. Yes, three per cent. would be only two tons; less than two tons."

Was asked the question, "Isn't the flue dust taken right back to the reverberatory and placed in the reverberatory, where the sulphur volatilizes again and goes right back into the stack?

A. If we didn't have the long flues it would go out in the air and spread in the valley and surrounding country.

Q. Does the sulphur all get out in the air ultimately?

A. It either goes that way or in slag.

Q. As far as you know, does not practically all of the sulphur in the form of sulphur fumes go out into the atmosphere?

A. A large part of it does, certainly.

Q. For that reason you think that the flue dust which you heretofore observed around the short stack and which you observed during the period of the short stack operations, is the damaging element in the operation of the smelters to the vegetation and live stock?

A. Well, I think it is to a large extent. *I think that the copper in that form is not very good for live stock or*

vegetation either. I don't know how it acts on them, only as a poison in the animals.

Q. I thought you stated that the poisonous elements or the damaging elements emitted into the atmosphere was the flue dust; I believe you incidentally mentioned it.

A. *Yes, I believe it to the flue dust, and possibly sulphuric acid.*

Q. I will ask you to state if any flue dust is generated in heap roasting?

A. Well, it is not flue dust; there are small quantities of dust, but not to any extent. (V. 34, 13202.)

Q. Isn't it a fact that the combustion in heap roasting—the temperatures are so low that very little if any dust is created in heap roasting?

A. Well, it is not confined; there is no great velocity in the fumes or gases from heap roasting; it is disseminated in a large space, and there is no velocity attached to it, so it cannot carry any mechanical part of this.

Q. Then the *only deleterious substance which would be driven off in heap roasting would be the sulphur fumes and other fumes which would be generated at a very low temperature?*

A. *Yes, practically.*

Q. Arsenic would not be generated ordinarily in a heap roast, would it; it would not be volatilized?

A. It might at certain points when they got burning, some parts of the heap.

Q. Do you think that arsenic would be volatilized with the heat of sulphur as disseminated in the Butte ores with the old bark and wood?

A. Well, if piled up in such shape that *it got a strong draft* at some particular point *it might be, but generally, no.*

Q. It would have to have a very strong draft, wouldn't it?

A. Yes, sir.

Q. But isn't it a fact that heap roasting as carried on in open heaps, it only dispells what you might call the sulphur from the ore?

A. Yes, sir." (V. 34, 13202-03.)

Admits there is a very much greater amount of sulphur eliminated from three thousand tons of ore treated at Anaconda than there is at five hundred tons heap roasted in Butte. (V. 34, 13207.)

Admits that some of the sulphur goes off in slag and is driven out in the atmosphere. Was asked the question, "Is it not your opinion that practically all of it goes out in the fumes, leaving a small percentage in the slag?"

A. Yes, sir, a great deal of the sulphur has to go off in the fumes.

Q. *Then practically all of the sulphur is eliminated through the fumes in the big stack, all pass out of the big stack?*

A. Yes, sir. (V. 34, 13208.)

Admits that they are treating a good deal more ore than they were treating under the old short stack. (V. 34, 13220.)

Admits that they are eliminating into the atmosphere a great deal more sulphur than they did when they had the short stack. (V. 34, 13223.)

In speaking of climatic conditions in and around Butte, the following question was asked (V. 34, 13265) :

“So far as you know, it only inconvenienced human beings here; it did not cause any damage to animals, is that true (meaning the smoke in Butte)?

A. I don't know of any direct damage. I suppose it would inconvenience them, too. (V. 34, 13265.)

Q. On that account what would you say as to whether or not Butte is a desirable locality for the erection of the smelter?

A. *It is not. And I question if they would be allowed to run here and treat large quantities as they used to.*

Q. Do you know whether or not there has been any judicial investigation at times for the purpose of determining whether the smelter could operate in the immediate vicinity of Butte?

A. Yes, sir. In addition to the judicial investigation the citizens have raised money to make surveys and examinations with a view of remedying the conditions here, but *it was found to be impossible to do so.*”

(NOTE.—If it was inconvenient for the citizens and the stock, as above testimony of this witness shows, in and around Butte, why should it be *any less to the citizens and stock of Deer Lodge Valley*, where, as the record shows, they are *smelting thousands of tons more daily than they ever smelted in Butte?*

The following question was asked (V. 34, 13279) :

“What have you to say as to the practicability of spraying through water or by water these fumes?

A. *Yes, sir, I know it would be impossible to dispose of the waste product; there would be such enormous quan-*

tities of it, of waste or wash water containing acid or poison.

As I remember, Mr. Clinton suggested or wanted to know if you thought it better to turn this out upon the farmers of the Deer Lodge Valley than to store it up within your fence down there after spraying. Would it be possible to store this waste product anywhere?

A. *No, sir, it would not. It would be more desirable to turn it into the atmosphere."*

(NOTE.—This clearly shows the Court that if water would wash acid and poison from the smoke it surely shows that the smoke contains acid and poison that is going out continuously every day, and is thereby admitted by the defendants that the smoke contains acids and poisons.)

Claims that the nearest hay cut around Butte is about six miles of Brown's Gulch. (V. 34, 13283.)

(NOTE.—The dismantling of the Butte smelters has been within the last six years, since the Amalgamated came into control.)

Claims he has lived in Butte permanently for twenty-six years; used to see more vegetation on the flat than there is now; saw vegetation in Missoula Gulch; used to gather wild flowers out there and used to picket his horses around on the hill near the Federal Building and out where he lived in Missoula Gulch; used to picket his horse there often and find grass enough; there was a good many evergreen trees along the brow of the hill. On what is known as the "Wake Up, Jim, Mountain Con. and High Ore" mines; the trees were in a thrifty condition when he saw them. (V. 34, 13295-96.) At that time there were a

good many trees on Timber Butte, about a mile south of here, all in a thrifty condition. It was also true immediately east of us, some two or three miles, the hills reaching up the main range and pretty well timbered; all in a thrifty condition. That is not true at the present date. They are all practically dead. (V. 34, 13239.)

(NOTE.—As well as all other kinds of vegetable life.)

H. E. CARLSON, sworn:

Claims his business or occupation at present is manager of the North Butte & Butte Coalition Company, of Butte, Montana. (V. 34, 13298.)

Claims that these companies are closely allied with the Amalgamated. John D. Ryan, Managing Director of the Amalgamated Companies, consulted as to the affairs of the Companies; shut up the Heinze, or M. O. P. Smelter, shortly after Heinze was bought out. (V. 34, 13332-37.)

Shutting down of the mines would not decrease the value of the ore.

Cross-Examination.

The development of the mines of Butte has been at a profit. (V. 34, 13341.)

The ore mined in Butte, prior to the erection of the Washoe Smelter, has always been treated. (V. 34, 13342.)

One of the most prosperous mining companies in Butte is the Boston & Montana, and they treat their ores at Great Falls. (V. 34, 13345.)

The Washoe Smelter does not represent one-twentieth of the value of the mining properties which send their ore

there; they are financially able to construct another smelter. (V. 34, 13346.)

The whole plan of the construction of the Washoe Smelter was to obtain the best profit at the least cost of treatment; to get the most return for the least amount of money. (V. 34, 13348-9.)

Re-Direct Examination.

It is not possible to use bags to collect the dust at copper smelters, as the gases eat up the bags. (V. 34, 13349-13350.)

(NOTE.—If it will do as above, how about vegetable and animal life?)

I DON'T THINK ANY ONE WOULD BE ABLE TO LIVE IN BUTTE IF ALL THE ORE MINED IN BUTTE WAS SMELTED HERE. (V. 34, 13362.)

(NOTE.—This last statement of Mr. Carson's should convince the Court, beyond the question of a doubt, that the injury is being done in the Deer Lodge Valley by the Washoe Smelter, as claimed by the complainant.

It would be a very strange condition of affairs if the ore should be smelted in Butte it would kill the people, while, when smelted in the Deer Lodge Valley, according to the defendants' witnesses, it is practically harmless in that vicinity.)

O. Y. WARREN, Deft.'s Wit.:

Defendants quote Dr. O. Y. Warren as having engaged at the Insane Asylum Ranch in diversified farming and stock-raising, and shows for many years past crops have increased, and they have no smoke trouble of any kind; also cut hay on the different ranches around there

—Cummock's, Gibb's, Liffing's, Bernard's and Purdu's ranches.

(NOTE.—The first notable thing about Dr. Warren's testimony is this, that although the Warm Springs Asylum Ranch consists of many hundreds of acres, he cuts only 337 tons of hay on the whole place, and another thing, this place was never conducted as a farm or stock ranch; simply used for the purpose of an insane asylum for the State of Montana. No pretensions are made to breed or raise stock there to any extent; all the calves raised there are raised from milch cows, and on page 19736, Vol. 50, out of sixty calves in one year lost five by abortions and six from other causes, or a total loss in calves of almost 20 per cent., still the Doctor don't consider this an unusual loss. (V. 50, 19738.)

But in 1902, when he admits injury from the smoke, he swears positively they did not lose any stock of any description. (V. 50, 19748-9.)

(NOTE.—Very strange testimony this; loses no stock, when he admits being damaged from the smoke, while when he claims he has no damage he losses about 20 per cent. of calves in one year. Here we also hear for the first time of hemlock poisoning, also Lupine poisoning. No other witness for defendants or complainant, after an investigation of over two years in the Valley, saw an animal even suffering from poison weed, and here we have a layman testifying to this strange fact.

Only the death of a cow; don't know what was the cause; all this occurred since 1902, under no smoke damages, according to Dr. Warren, while under the smoke damage, as admitted by Warren, no loss whatever.

Dr. Warren clearly shows bias in the above statements; also shows how deeply he is interested in this

case by his going to Idaho and attempting to purchase the ranch of F. J. Bliss for the defendants, after the plaintiff had closed his case in chief, and during the intermission and before defendants began their defense. What was *this* done for? The Doctor, knowing this F. J. Bliss case was a test case, in which all the farmers were interested, attempted to further the ends of the defense by the purchase of the Bliss ranch, well knowing if he succeeded in the purchase of the Bliss ranch the cases of the farmers of the Valley would have to be begun all over.

If Dr. Warren or the defendants' agents were willing to act in an honorable and open manner, why did not Dr. Warren come to Mr. Bliss' attorneys, who were in Butte, and tell them openly and honestly he wished to purchase the ranch for the benefit of the defendants, instead of going secretly to Idaho and there making his overtures to F. J. Bliss? No fair man would lend himself to any such underhand work, and Dr. Warren only did it to further the interest of the Defendants' Company, and swears positively he was sent there by John D. Ryan, President of Defendants' Company, for the purpose, which will be seen by the following questions and answers (V. 50, 19781):

Q. Did Mr. Ryan—did you learn what purpose Mr. Ryan wanted this place for?

A. I did not.

Q. It was not, in your judgment, anything to do with this suit?

A. He didn't tell me one thing or another; I had no idea anything about.

Q. But in your conversation with Mr. Bliss, did you make him an offer, or just asked him to set his own price on it?

A. I made him an offer.

Q. Didn't you ask him to set his own price on the land?

A. I asked him if he would sell it, and at what price?

Q. You didn't inform him as to whom you were buying it for?

A. No, sir.

Q. You don't know how Mr. Ryan came to send you down there?

A. No, sir. (V. 50, 19781-2.)

(NOTE.—The above testimony shows one of three things: First, that Dr. Warren was not an intelligent man, but this theory must be discarded, as all who know the Doctor must admit his being one of the most intelligent men in the State of Montana—or, second, that he was willing to do anything asked of him by the Defendants' Companies' representatives without asking any questions; or, third, that Dr. Warren was as much interested in suppressing facts in regard to conditions in the Deer Lodge Valley as are the defendants themselves. "Why," you doubtless ask, for the reason that the grounds and building of the asylum are owned by private parties and not by the State of Montana, and if the true condition as to the poisonous effect of the smelter fumes are proven, the Doctor's employers would, doubtless, lose the contract for the care of the "insane" of the State, and they would be much more seriously injured in that way than they would be by the entire destruction of all vegetation and all stock on their entire ranch.)

Dr. Warren admits that from September 1st they start to feed bran, shorts and hay to his dairy cattle. (V. 50, 19728.)

Other stock or young stock pastured from May until October. (V. 50, 19730.)

(NOTE.—Shows Dr. Warren in no manner allows his stock to pasture the normal time for pasturage in Montana.)

Admits he had the sore nose among his horses in 1905.
(V. 50, 19749.)

(NOTE.—All he had to do with his dairy cows in 1902 was put them up and feed them excessively and they became all right. All he had to do with his horses in 1902 was get them up and feed them and their noses got well and *he lost none at all*. All the effects he could see in 1902 on his cows was the shortage of milk, which was easily overcome by excessive feeding.

What is the difference in 1905 and 1906? Lost a great number of calves; horses had the same sore nose; one was smoked in 1902, when it suited the defendants to acknowledge smoke, *but in 1905*, when the defendants say *no smoke injury*, Dr. Warren peeps through the same glass, but he is compelled to *see the sore nose even then*.)

Swears no damage whatever to stock or crops since the erection of the big stack, but on page 19749, Vol. 50, has stated the horses in February of 1905 had the sore nose, and this record is full of the facts that the sore nose was admitted in 1902 to be caused by the smelter. Jesse Miller, F. McCleary and Dr. Knowles all swear a sore nosed horse in 1902 was paid for as a smoked horse by the Defendants' Company. (V. 50, 19750.)

(NOTE.—Dr. Warren has doubtless been told by the defendants' counsel that the sore nose in 1905 was not caused by smoke, while doubtless in 1902 Dr. Warren was paid for sore nosed horses as smoked horses. The Doctor, doubtless, has changed his opinion since 1902. *Why?*

The Doctor minimizes his damage in 1902, and from reading his testimony on direct a court would think it so insignificant he would probably pay very little attention to it, *but* what was he paid in damage in 1902 by the Defendants' Company? \$4700. What for? *A slight shrinkage in milk and a few sore noses and no deaths at all.*

We submit to the Court that the price received in damages in 1902 does not accord with the minimized damages as claimed to have existed then by Dr. Warren.

Dr. Warren shows this amount was paid him without him putting in any bill, and the damage was fixed by Jesse Miller, Dr. Knowles and another gentleman. (Record shows McCleary was the other gentleman.) Does the Court believe if there had not been \$4,700 in damages on this place he would have been paid it by these Company adjusters? *Most assuredly not.*

The Doctor's memory is not clear enough to give the amount of stock he had on the ranch in 1902; could not say he had 100 head of stock on the ranch or not in 1902. (Record, 19784.) But does admit had less stock than at present.

First year cattle were ever brought by Warren from the Big Hole to feed in Deer Lodge Valley was the winter of 1905-1906. Admits hay could be bought in the Big Hole for *four dollars a ton*, while hay in the Deer Lodge Valley is worth *about seven dollars*. While the Doctor states these cattle were brought over to feed his hay to, why not of sold his hay in the Deer Lodge Valley and bought in the Big Hole and cleared \$3 a ton on the hay fed, besides saving the expense of moving the cattle from the Big Hole to the Valley and back again, notwithstanding Dr. Warren's statement that these cattle were not brought into the Valley to feed at the instance of the defendants? Taking the actions of Dr. Warren in this case in consideration, what is more reasonable than to doubt his statement

as he states this is the first year it was ever done?)
(V. 50, 19783.)

Admits that in driving from his place to Anaconda the farms are worse than they used to be, and the closer you get to Anaconda the worse their condition. (V. 50, 19786.)

Warren admits the cattle he brought from the Big Hole to winter were not allowed to pasture, but were kept on hay feed all the while they were there, and taken away without allowing them to pasture at all. (V. 50, 19787.)

Can't give any idea how much they were fed. (V. 50, 19788.)

Dr. Warren, on cross-examination, shows all horses are stabled at night and are fed on *bran mash* twice a week. Not allowed to live on the pasture. (V. 50, 19791.)

Dr. Warren evidently does not keep very close watch on the stock cattle and horses on his ranch, as he failed to notice the sore-nosed horses on his place in November of 1905, as sworn to by Leffring, complainants' witness, on page 3290, Vol. 9; Roberts, complainants' witness, page 3311, Vol. 9, and Cummock, complainants' witness, page 2559, Vol. 7; also knows nothing about the killing and burying of sick cattle on the ranch. This was testified to by Leffring, complainants' witness, on page 3290, Vol. 9, and not disputed, that these cattle were sick and killed and buried on about September 1st, 1905, and these cattle looked like my cattle—coats rough, gaunted up, eyes sunken, thin in flesh. (V. 50, 19791.)

On page 19792, Vol. 50 Warren contradicts his statement made on direct examination as to the feeding of his beef cattle in 1905-1906. Warren states these cattle were

not fed until about November 20th, and kept in good beef condition on the pasturage alone, while on cross-examination (page 19792, Vol. 50) he states they were fed hay as soon as they were turned into the field, and did not leave the lot where they were fed. Lot was about four or five acres of land.

Leffring, complainants' witness, states these beef cattle were put into the field and would not eat the pasturage; that they would leave it and come to a knoll near his place and lie down there, and that the butcher from the *Springs* or *Asylum* would come over and drive them out into the field, and as soon as he left them they would return and lie down; would *not eat the pasturage at all*. Leffring here shows that they tried to force these stock to eat the pasturage for a week instead of, as Dr. Warren testifies on cross-examination, that they were at once put on hay feed, while on direct examination he states they were allowed to pasture to about November 20th. (V. 9, 3343.)

(NOTE.—Who to believe here—Mr. Leffering's clear and concise statement or Dr. Warren's contradictory ones?)

Warren admits main business treating patients at the Insane Asylum and managing the institution. Admits the asylum buildings are worth over \$200,000. Have over 620 patients. (V. 50, 19795.)

Owns no land himself in the Valley, *but* is under salary to the owners of the asylum grounds, Mitchell and Musicbroad; also has a percentage interest in the profits of the institution. (V. 50, 19796.)

Admits many of the buildings would be valueless if the insane were removed from there. (V. 50, 19797.)

Employs about fifty insane patients on this ranch and garden. Has about 1830 acres in the ranch; would not say he had over six acres in garden and crop. (V. 50, 19797.)

Does no grain farming. Buys his grain mostly at Bozeman; also flour, bran, shorts and meal.

We sell nothing from our dairy.

Cut only 337 tons of hay on this entire place in 1906. Admits Big Hole best winter feeding place in Montana. (V. 50, 19738.)

(NOTE.—Nevertheless, although they own 3,000 acres of land in the Big Hole, they bring cattle to feed in the Deer Lodge Valley. Why? Doubtless only for experimental purposes, and to enable Dr. Warren to increase the number of stock on this ranch so as to be able to testify to it.)

On direct examination, page 19740, Vol. 50, states they had three car loads of cabbage; on cross-examination, page 19799-80, Vol. 50, states he does not know that he had three car loads. (V. 50, 19799.)

Can't tell how many acres of the 1830 they own; it was necessary to cut to get the 337 tons of hay. Admits Cummock's crop decreased in 1906.

Can't tell how many calves he vealed in 1905. (V. 50, 19800.)

Admits that there may be weeks at a time when he does not see the stock on the ranch on account of his duties. (V. 50, 19802.)

(NOTE.—This statement of Warren's shows he pays very little attention to the ranch and is not competent

to testify in detail to the condition of his stock. From Dr. Warren's testimony, on pages 19797-19801, Vol. 50, no intelligent idea of the production of his ranch can be arrived at; don't know the yield per acre; don't know how much acreage in crop; in fact, Dr. Warren's ranch is simply a large body of inferior land, cultivated by insane patients, and with no idea whatever of conducting it as a farm and making a profit thereon, and his testimony and actions, unquestionably, show him interested more in the keeping of the contract for the insane than in his farming operations, and unquestionably if Dr. Warren were compelled to pay wages for the work done on his ranch he could not make expenses. Another thing the Court will see by Warren's testimony is, no stock cattle are kept in the Valley, also no breeding mares, only one or two on a ranch of over 1800 acres—only dairy cows and work horses. Dr. Warren's stock operations in Deer Lodge Valley are, and should be, classed as a dairy business, and his losses of cattle are much above the normal loss. Three two-year-olds, 1 cow and 11 calves from about 100 head of stock, or a loss in one year of 15 per cent., five times the normal loss in cattle.)

Admits that in August his dairy cows are fed bran. (V. 50, 19803.)

Admits the leaves of his shade trees were spotted black in August, 1905, at the time of the Court's visit to the Deer Lodge Valley. Attributes the unhealthy condition of his trees (which are cotton-wood) to too much water, underground water. (V. 50, 19805.)

(NOTE.—It is a matter of common knowledge that the cotton-wood tree only grows in its natural state in places where there is an abundance of water on the banks of a stream or in swamps or at or near springs on the mountain sides, so the Doctor's theory of too much water won't hold good, and in the Deer Lodge

Valley these trees *can only* be found growing in swamps or extremely *wet places*.)

Claims to have had a heavy frost just prior to the Court's visit, and states the dead condition of his *onion* tops probably due to that cause. (V. 50, 19807.)

(NOTE.—When Dr. Warren states a frost will injure onion tops he clearly shows he knows very little about farming, as it is a fact so well known to every person that a severe frost does not injure onions, and when a frost occurs severe enough to destroy onions everything else in a garden is practically destroyed, except beets, ruttabagas and turnips. A potato crop would be completely wiped out, and the strange thing is the Doctor's *peas* were not frozen, while onions were, clearly showing it was not the *frost* which was the trouble with the Doctor's garden, and the Court will remember this was in August, when this frost was *supposed* to occur.

We see by this page that the hay crop on this ranch averages less than 500 pounds to the acre, taking the ranch as a whole, and as this land is all bottom land—see map—and taking into consideration the extra care given this ranch, something must be wrong, as they are compelled to cut hay on shares in order to maintain their stock.) (V. 50, 19810.)

Admits that 125 head of stock old enough to be fed hay (excluding only sucking calves) would be a fair average of the amount of stock kept on this ranch (of 1800 acres) steadily, or month in and month out. (V. 50, 19813-14.)

(NOTE.—The Doctor claims that these stock are given no better care or feed than prior to 1902. But let us take the amount of hay fed per head to these animals. Dr. Warren admits on page 19810, Vol. 50, he has 500 tons of hay, and it takes it all to feed his stock. What do we see that the Doctor feeds four tons to the

head of stock during the year? Four times as much hay as it formerly took in the Valley for an average herd of stock; twice as much as it took to maintain a dairy herd of the same number, as all the stock Dr. Warren has; or suppose Dr. Warren's hay was worth \$7 a ton, it costs him \$28 per year for hay alone for every head of stock on his ranch, and the Doctor has 1800 acres of pasture land, so there can be no shortage of pasture claimed by defendants on this ranch as an excuse for the feeding of the enormous quantities of hay fed by Dr. Warren to these stock. Take the history of the Valley prior to 1902 as given by Hammer, Parrott, W. J. Evans, Angus Smith and K. D. Smith, and we find that these men kept more stock on their ranches of from 160 acres to 500 acres than Dr. Warren ever kept; bought no hay and cut none on shares, and in the case of Evans and Parrott sold large quantities of hay as well.)

Admits on this page that the increase in his hay crops has been caused by increasing the area of his hay land. (V. 50, 19814.)

(NOTE.—Dr. Warren shows no place in his testimony where any given area of land has increased in production, and the only way there has been any increase of crops was by increasing the area of land in cultivation.)

ABSTRACT OF TESTIMONY OF JESSE MILLER.

(Defendants' Witness.)

Has resided in the Valley since 1868, and is now in the employ of the A. C. M. and Washoe Company, and has been in their employ since 1900. (V. 49, 19392.)

States that he has helped to bind the grain on the Bliss place when Charles Jones and Frank Threlkeld farmed it, and he stacked hay on the Bliss ranch for Dan James two

years, which years were 1887 and 1888. (V. 49, 19400.)

That in the early days stock were never fed until they were compelled to feed them, but they ran at large in the swamps. (V. 49, 19400.)

(NOTE.—By “being compelled to feed” means when the pastures were eaten off or covered with snow.)

States that they began raising grain in the Deer Lodge Valley in the years of 1883-4, and continued to do so until they wore out their ground. (V. 49, 19409-10.)

Grain raising was chiefly conducted on the bench land. States that Morgan Evans was one of the first to go on the bench land to raise grain, which was about 1878 or 1879, and he put in a big crop and had good market in Butte, and he kept raising grain, I think, *until about* 1903, when he began to complain that he could not make anything from his grain crop.

(NOTE.—This witness shows by the above that only after 1903 did any one complain they could not raise grain profitably—1903—after the Washoe Smelter began operations.)

States that on the Fifer place, where John Hamner is, that they have raised lots of grain there, but not much grain has been raised in recent years, and one reason he gives for not raising as much grain on this place, as well as on some others, is a shortage of water. States that it takes lots of manure to fertilize and keep the lands in shape. (V. 49, 19410.)

(NOTE.—No evidence whatever to show that there was any shortage of water on the Fifer ranch. The evidence does show that it was practically abandoned.

The truth of the matter is that the Fifer ranch has Water Right No. 1 or 2, and an adjudicated right, and there never has been any complaint as to the shortage of water for the Fifer ranch.)

States that Mr. Cummock's ranch was always more or less alkali, but is a great deal worse now, and it is so bad now that hardly anything grows there. It used to be a good ranch for wild hay, but it is all alkali grass now. (V. 49, 19413.)

(NOTE.—On page 2547, Vol. 7, Cummock, plaintiff's witness, states he has eighty acres of alfalfa; fifty or sixty acres in wild grass pasture.

On page 2563, Vol. 7, states he raised 365 tons of alfalfa.

On page 2564, Vol. 7, *he states his crop fell off 145 tons in 1905. He claims this falling off was caused by the smoke.*

This testimony of Mr. Cummock's, which is undisputed, except by Mr. Miller, defendants' witness, clearly shows the class of testimony Mr. Miller will give. Simply shows his bias as against the farmers of the Deer Lodge Valley.

Mr. Cummock paid \$7,000 for this ranch prior to the smoke trouble..)

Dr. Gardiner, defendants' witness, states the finest field of alfalfa he ever saw growing he saw on Cummock's place in Deer Lodge Valley. (V. 49, 19417.)

States that Goddard's place is very wet now, and they don't raise anything; that it was formerly first-class grain land. (V. 49, 19414.)

States he knows of no market for beef from the Deer Lodge Valley except Anaconda and Butte.

(NOTE.—This witness stands alone in the above tes-

timony, "no market for the Deer Lodge Valley beef except Butte and Anaconda."

Defendants' witness, George Moore, shows that he purchased, in the spring of 1906, over two thousand head of cattle for the Seattle market in the Big Hole Basin, and these cattle were shipped from Anaconda, Montana. It also shows that he can *only find two cars of beef cattle in the Deer Lodge Valley*, and they had been fetched into the Deer Lodge Valley only recently.

If Butte and Anaconda were wiped from the maps of the State of Montana, it would not affect the price of beef stock in the Deer Lodge Valley one cent, as Montgomery, defendants' witness, testifies that the Chicago and Western markets regulate the price of beef in Montana, and Mr. Miller is trying to deceive the Court when he makes such a statement as the above.)

States that in early days that they drove cattle to Deadwood and Black Hills prior to the erection of Butte City. In late years there has been an increase in the dairy stock. (Montgomery, defendants' witness', testimony shows his sales and foreign markets.)

Says it is more profitable to run a dairy than it is to raise hay and stock, and that one could not raise range stock in Deer Lodge Valley at a profit at the present prices of hay. (V. 49, 19420.)

(NOTE.—Still Sweeney, defendants' witness, sold out his dairy and went to work at \$3 per day for the Company.)

States that alfalfa hay at \$5 a ton could not be profitably fed to range stock, and that if he could get such a price for alfalfa hay it would be more profitable to sell than to feed it to the stock. (V. 49, 19420.)

(NOTE.—Montana, one of the best stock-raising States, and nowhere in Montana is hay as cheap as it is at the present time in the "Smoke Zone" of the Deer Lodge Valley.

Still this witness states in early days stock run on the meadows and ranges all winter.)

States he has paid as high as \$7 a ton for hay on the Bliss ranch. (V. 49, 19421.)

(NOTE.—Montgomery, defendants' witness (page 12285, Vol. 31), paid \$5 and \$6 per ton for alfalfa hay in the stack on the Beal, Cummock and Fisher ranches for the crop of 1903; cut while the smelter was closed down.

To show the steady depreciation in hay, we call the Court's attention to Montgomery's testimony, page 12308, Vol. 31, where he buys hay from these same men—Beal, Fisher, Jolly and Schwend—for \$2.50 to \$4 per ton in the stack at a later date.

Montgomery, defendants' witness, further admits in his testimony that he refused to buy hay from the Staton ranch at any price. This last ranch is only two miles from the smelter.)

States he has kept over 100 head of cows in the Deer Lodge Valley for twelve years, and fed them, and has also been overseer of the A. C. M. Co. farm, which owns something over four hundred head of cattle, and he knows that they have been eating hay. (V. 49, 19422.)

(NOTE.—Most of these four hundred cattle were bought in November, 1906, from out of the Smoke Zone, and only in the Valley a few weeks.)

He does not know what it has been costing them, but hay has been selling in Anaconda for \$14 a ton, and from his own experience the stock industry is not profitable. (V. 49, 19423.)

(NOTE.—Goodwin, defendants' witness, shows how they, the Defendants' Company, got this \$14 per ton for hay at the time hay from adjoining ranches could not be sold at all. The Ranching Department sold to the Foundry Department of Defendant Company for \$14 per ton, simply charging themselves what they saw fit.

W. C. Staton's, complainants' witness', testimony shows he could not sell his hay at that time at all, not even to pay a debt at the purchaser's own price. (Staton's ranch and Section Sixteen only one-half mile apart.) (V. 49, 11288-89.)

States in 1902 and 1903 he, with Dr. Knowles, complainants' witness, and Frank McCleary, defendants' witness, visited nearly every ranch in the Deer Lodge Valley. (V. 49, 19423.)

That they examined all the live stock they had, and the condition of the live stock was very bad, and that up Mill Creek, along the road, thirty-five or forty dead animals might have been counted without getting out of the rig, and that the conditions of the stock in 1904 and 1905 has not the slightest comparison with the stock in 1902. (V. 49, 19423.)

(NOTE.—The testimony of J. O. Allen, W. C. Staton, J. W. Mitchell and others show all stock, either dead or removed from this range; nothing there now to die.

Dr. Knowles, pages 2112-13, states same conditions existing at this time as in 1902, and smelter poison was apparent.

Dr. Knowles' complainants' witness, testimony contradicts Mr. Miller, defendants' witness. He states that conditions are practically the same in 1904-5-6 as they were in 1902, with the exception that there is not so many dead stock, and the reason for which is

that all the testimony in this record shows that the cattle and horses have died or been driven out of the country to avoid death.)

The live stock that have plenty of feed are in good condition and look well; the stock, during 1905-6, looked just as well as they did prior to the erection of the Washoe Smelter, *with the exception of the sore nose*. During the last few years in Deer Lodge Valley, where they farmed their crops properly and had plenty of water, they raised good crops. "I have seen as good crops this last year, and this year, as ever I saw in the Valley," mentioning the Jacques, John Quinlan, Nick Bielenberg and other places of the Valley. (V. 49, 19425.)

(NOTE.—See the testimony of these witnesses above mentioned, who all dispute this, and give the actual decrease of their crops over years prior to the erection of the Washoe Smelter..

The witness here tries to account for better live stock conditions in 1904 and 1905, as compared with 1902.

The evidence of Mitchell, Allen, Staton and Karlock, complainants' witnesses, men who all live in this vicinity, show that the cattle and horses on this range had all died off, or what did not die were taken away to keep them from dying.

The only man who had any range stock on this range at all was Staton, and his testimony shows enormous losses among both horses and cattle.

George Parrott, William Evans, complainants' witnesses, and others all testify that on this principal range, specified by Mr. Miller, defendants' witness, where thousands of head of horses and cattle used to range prior to the erection of the Washoe Smelter, now there is none, so while Mr. Miller says you might count thirty-five or forty dead animals without getting

out of the rig in 1902 there was simply none there to die in 1904 and 1905, except Staton's cattle. He had something like two hundred head.)

States that whenever they had plenty of water and the land was good they raised good crops; also states that he has charge of the farming operations of the Washoe Company, but has not had time to look over them very much. (V. 49, 19428.)

(NOTE.—Still he has had time to superintend Dobbin's garden and hog ranch.

Dobbin is the manager of the Company hotel in Anaconda.)

(See Dobbin's testimony, page 10297, Vol. 26, where the following question was asked:

“Q. When did you put that garden in?”

A. The first time?

Q. Yes, sir.

A. Why, Mr. Miller put it in for me last spring, and I put it in again this year.” (V. 26, 10297.)

Also notice on page 10301, where the following question was asked:

“Q. How many pigs were purchased for you at this same time by Mr. Miller's?—meaning Staton's sale.

A. Forty-eight, and this boar made forty-nine.”

DOBBIN (V. 26, 10303):

“Q. Where did you obtain this alfalfa?

A. Mr. Miller bought it for me from somebody, some place down in the Valley here. He ordered it for me. I forgot; I paid a man for it; I don't remember his name. I can hunt him up in the book.

MILLER (V. 49, 19428) :

States that he bought the Staton cattle, and that they averaged something like \$9 a head, and there were eleven calves thrown in with that bunch. States that on the morning they were sold—in company with Mr. Dunlap, Dr. Gardiner, defendants' witness, and Mr. Staton, complainants' witness—he saw these cattle south of Mr. Staton's house, in a bunch-grass field, *where they had been fed some alfalfa hay.*

The total number purchased from Staton was ninety head, without the eleven calves, and they were all very lousy.

(NOTE.—Disputed Dr. Gardiner, defendants' witness, who says they were wandering aimlessly around in the snow.)

Dr. Knowles, State Veterinarian, on page 2129, Vol. 6, *never saw a bad case of lice on cattle in the Deer Lodge Valley.* Page 2144, Vol. 6, Dr. Knowles states these cattle were suffering from arsenical poisoning.)

States they looked as though they all wanted hay. *They ate four loads of hay that night when we pitched them hay.* (V. 49, 19430.)

(NOTE.—*That would be eighty-eight pounds apiece. Does the Court believe such testimony?*)

Dr. Pearson, defendants' witness, states thirty-five pounds is an average feed per day.)

States the cattle have been on pasture since the date of purchase, but have been *fed hay from October to the last of May.* (V. 49, 19431.)

(NOTE.—Mr. Miller's, defendants' witness, definition of "on pasture" is given here to try and deceive

the Court. As is shown by the testimony in this record, where these cattle were taken on Section Sixteen, there is one and three-fourths sections of land, and all the cattle that had ever been on this land since owned by the A. C. M. Co., for a period of some three years, was two or three milk cows of Alva Cook's, and a few of the Callen cattle, ten or fifteen.

Still these cattle were moved there on October 19th, and, unquestionably, if normal conditions had prevailed in the Valley, there would have been an abundance of fall pasturage on this ranch, but it also shows in the record by numerous witnesses cattle will not pasture much in the Deer Lodge Valley if fed hay, and Mr. Miller's testimony shows that these cattle were fed hay continuously from October 19th, and Mr. Dan Thomas, defendants' witness, states that these cattle were fed hay until June of the following year.

Does this look like pasture conditions to the Court?)

States the steers running on the Bliss farm were removed the 2nd of October and taken to Section Sixteen, and at the time he was on the stand these steers were being fed on Section Sixteen.

(NOTE.—Miller, defendants' witness, contradicts Gardiner, defendants' witness, here. Gardiner claimed the steers were left here for some two months later.)

States that John Bielenberg showed him eight cows, and that he examined the dead carcasses and found their kidneys were covered with fat, and as these cattle had been turned into a bunch grass field, where no stock had been recently, and the grass was quite high and very dry, and it was late in the fall, *their death was due to drinking water, and not to poison*; as all the poisoned cattle he ever saw were very poor, and that Mr. Bielenberg immediately took the balance of the cattle away, and that he only lost

one cow and two calves of the balance of that herd. (V. 49, 19440-41-42.)

(NOTE.—This testimony of Mr. Miller's regarding the death of Bielenberg's cattle is strongly confirmed by another witness for the defendants, W. R. H. Edwards, who states on page 9807, Vol. 25, that he found several of his cattle dead on Beef Straight in the early days. He thinks the dry grass which grew up, and not ate off, and the green grass coming up, and growing rapidly, created a gastric juice in the stomach and killed them.

Since there has been no dry grass left in the Deer Lodge Valley there has been no poison. "I made an experiment in regard to this to test my ideas. I cut a lot of bunch grass, dry and green—quite a sack full; I cut it with a butcher knife, and put it in a tight wash boiler; poured scalding water on it, and I am not positive whether my wife did not boil it a little. I lashed it with a three-eighth inch cord or clothes-line, and during the night it burst that line and all the gas escaped. That satisfied me. That was the only experiment I ever made.")

On page 9702, Vol. 25, the following question and answer:

"Q. If the ranchers down there now did not cut their hay, or only partially cut it, and left it stand from year to year, the old hay, how would that condition approach the condition of the ranges where this occurred (meaning this poison), in early days?

A. Well, I think it would have the same effect."

(NOTE.—Mr. Miller and Mr. Edwards, defendants' witnesses, have simply shown by their testimony, in this matter, that they are absolutely ignorant of all stock conditions in the West, for it is a well known fact in this Court, and every stockman and farmer

that the cattle on the ranges of the West began to fatten up, fit to ship to the Eastern markets, when they are fattened upon this dry bunch grass, as the fat put on cattle by the green bunch grass is not solid, and cattle will not stand shipping to market until in the fall of the year, or after the grasses have cured and dried up.

Mr. Edward's testimony about the gas generated from this dry grass in a wash boiler is a sample of his evidence in this entire case. Too absurd for any belief by an intelligent Court.)

States there are as many cattle in Deer Lodge Valley right now as there were in 1900 or 1901, but there are not as many horses. States in 1900 and 1902 there were a great many horses sold out of the Valley to Eastern buyers, and since that time horses have not been bred in Deer Lodge Valley, giving as a cause of the stopping of breeding that there was a poor market, but at the present time the market was very good. (V. 49, 19443.)

(NOTE.—The testimony of Dan Thomas, defendants' witness, shows that the Company had shipped in numbers of cattle recently into the "Smoke Zone." and states that he thinks the Company has shipped in almost as many as there used to be owned in the Valley by the farmers, or words to that effect.

Unquestionably these cattle were shipped in for the express purpose of manufacturing testimony.

Where have these cattle gone since the suit?

This statement as to there being as many cattle in the Deer Lodge Valley at the present time as there was prior to the operation of the Washoe Smelter is just a broad, sweeping statement of Mr. Miller's.

When asked on cross-examination the names of probably fifty men who used to own live stock in the Deer Lodge Valley as to the numbers they had in 1902.

and the number they have at the present time, he could not give a single instance of the number they owned before and after the operation of the Washoe Smelter.

This testimony, as to the amount of live stock in the Valley, is disputed by practically every witness for both complainant and defendants.

The testimony of Mr. Hamner, defendants' witness, page 6327, Vol. 16, and the testimony of W. C. Staton, complainants' witness, page 6327, Vol. 16, gives the number of cattle prior to the operation of the Washoe Smelter, in his immediate vicinity, at over one thousand, which were range cattle.

On page 6430, Vol. 17, Staton testifies he counted the stock cattle on forty-three ranches, and there were eight hundred and ninety-seven head. Five hundred head of these were cattle, as shown by Mr. Bielenberg's complainants' witness, testimony, to have only recently been brought to his place, and were not Deer Lodge Valley cattle at all.

The stock on these forty-three ranches, as counted by Staton, were the principal ranches of the Deer Lodge Valley. *Nick Bielenberg's, complainants' witness, testimony shows, prior to the operation of the Washoe Smelter, he kept upon his ranch more stock cattle than is now in the entire Smoke Zone of the Deer Lodge Valley, not excluding the four hundred head that the Defendant Companies recently purchased and took to Section Sixteen.*

The complainants' witness gives the ranches, the numbers of cattle before and after the smelter operations, while Mr. Miller, defendants' witness, simply makes the broad, sweeping statement that there is as many cattle now in the Deer Lodge Valley as there was prior to the smoke trouble.

It is true that McCartney, defendants' witness, in counting the stock of the Deer Lodge Valley, found many cattle, but where did he find them? By count-

ing cattle upon ranches such as Kohrs & Bielenberg's, Peter Valiton's and Conley and McTague's, which ranches are entirely out of the "Smoke Zone" of the Deer Lodge Valley.

No claims has ever been made in this Court that they were damaged except to about three sections of pasture land belonging to Kohrs and Bielenberg, on the west side of the Deer Lodge Valley.)

States he has been familiar with the Bliss Ranch since 1868, and that the Bliss Ranch, leaving out the question of smoke, or smoke damage, is not as good a ranch as it used to be, for the reason that they plowed up the natural hay meadow, and did not reseed it, and it lies there with fox-tail and weeds all over it, which has practically ruined the ranch; that this plowing, or some of it, was done when he first came here. (V. 49, 19444-5.)

(NOTE.—Disputed by K. D. Smith, complainants' witness, and others; only fifty-three acres ever plowed on this ranch.)

Dan James used to farm it until he couldn't make anything out of farming it, and he left it alone. I would place a valuation of \$2,500 on the Bliss Ranch. (V. 49, 19444-19445.)

(NOTE.—Not the value of the improvements.

Disputed by nearly every Company witness.)

Dan James states Bliss Ranch a better ranch when he sold it than when he bought it.

States on December 16th, 1905, that he bought two sheep from Mr. Ryan and examined them, but Mr. Ryan would not accept any pay for them. (V. 49, 19450.)

Cross-Examination.

Admits that Dan James did very well while he was on the Bliss Ranch, and that he considered him a good average farmer, and that the present time Mr. James does not own any land in the Deer Lodge Valley. (V. 49, 19451.)

Admits that his own success as a farmer has not been very good. (V. 49, 19452.)

States that Walter Staton took the benefit of the Bankruptcy Law. (V. 49, 19452.)

(NOTE.—Walter Staton, in his rebuttal testimony, page 21419, Vol. 54, in answer to the following question, “Q. Did you ever take the benefit of the Bankruptcy Law?” answered, “No, sir, and the man who swears to that swore to an unqualified falsehood.”)

This shows the bias and prejudice of Mr. Miller; he did not regard the truth, and would perjure himself, under oath, to hurt the reputation, if possible, of the witnesses of the complainant, and especially Walter Staton. And a witness who will deliberately swear falsely in one thing his evidence can be disregarded, unless it is corroborated by the evidence of others.

While we do not consider that it made any difference whether a witness had taken the benefits of the Bankruptcy Law, which was entirely immaterial in this case, nevertheless it shows to what an extreme the defendants will go, and how willing one of *their commercial witnesses holds himself ready to earn his monthly salary.*)

Admits that he testified that in the land contest of Walker against the Company some three hundred and twenty acres were worth only \$2.50 an acre, and that the Company finally paid \$12,000 for it—\$37.50 an acre. (V. 49, 19452-53-54-55.)

Admits that he swore that the Evan Jones' land was not

worth over fifty cents per acre, but will not admit that the jury awarded \$700 damage for ten acres in a suit against the Anaconda Flumbing Company.

States that he is acquainted with most of the "Smoke Farmers," as they are called, but does not think he can mention many who have since 1902 increased their number of cattle. States in 1902 Dan Murphy had two cattle, but at the present time he don't think he has any.

(NOTE.—Can't even mention one person who has done so.)

States that Frank Callen had a good many cattle; had fourteen or fifteen head of horses, but he will not state how many he has at the present time. (V. 49, 19456.)

States that John Karlock didn't have many horses or cattle in 1902, nor will he state how many he has at the present time. States Wm. Evans has something like one hundred head of cattle in 1902, and perhaps twenty-five head of horses, but will not state that it was not a fact that he only has ten head of cows and three head of horses at the present time. (V. 49, 19456.)

States George Cox had quite a dairy herd, but will not state how many he has at the present time. States that James Bennett has more horses and cattle now than he had in 1902, but does not know how many cattle or horses he has—says perhaps in the neighborhood of forty, and he thinks perhaps in 1902 he had about twenty head, but would not be positive—he cannot remember. (V. 49, 19458.)

States Matt Smith has as many horses and cattle now as he had in 1904, but he does not know how many he has.

Does not remember how many horses and cattle Dave Scott had in 1902, but thinks he had more than in 1905. (V. 49, 19459.)

States he does not remember how many cattle Robert Nelson had in 1902, nor does he know how many he has at the present time; nor does he know whether he has any. (V. 49, 19461.)

States that Joe Saville had three or four head in 1902, but does not know how many he has now. States William Parrott had less than twenty head of horses and cattle in 1902, and thinks in the winter of 1904-5 he had four or five head of cows. (V. 49, 19462.)

States he does not know how many cattle Charles Rivers had in 1902, and he don't know how many he has now. The same can be said of Peter Staton. (V. 49, 19462.)

William Evans, in 1902, had about twenty head of cattle, but he does not know how many he had in 1905. (V. 49, 19463-64.)

States Mitchell had in 1902 about three or four cows and two or three horses, but does not know how many he has at this date. States Hiram Staffanson was paid \$3,300 damages in 1902, but does not know how much stock he had there then or how many he has now. (V. 49, 19463-4.)

States Mrs. Holtz only had a few head of stock in 1902, but does not know how many she has at this time. States he does not remember how much stock George Cummock had in 1902, nor does he know what he has now. States Griffith had two or three cows and two or three horses in 1902, but does not know how many he has now. (V. 49, 19465.)

States Chris Jergenson, defendants' witness, has more now than in 1902, but he doesn't know how many were settled in 1902; nor does he know how many cattle Mr. Jergenson has at this time. (V. 49, 19466.)

States Jesse Staffanson did not have many and does not know how many he has now.

Will be seen that Hiram Staffanson and Jesse Staffanson, by Mr. Miller's testimony, have left the Deer Lodge Valley. (V. 49, 19465-6-7.)

States he does not know how many stock Steve Hovarth has at the present time. States Bohn, complainants' witness, had very few in 1902, but he does not know what he has now. (V. 49, 19467.)

States Luke and Bert Talbot did not have many in 1902, possibly fifteen or eighteen head, yet he does not know how many they have at this time. (V. 49, 19468.)

States Byron Howell, complainants' witness, might have had thirty or thirty-five head of cattle in 1902, but does not know whether he has any today or not.

States Mrs. Harris did not have much stock in 1902, but does not know whether there are any cattle or horses on the Harris ranch at the present time. (V. 49, 19469-70.)

States W. C. Staton, complainants' witness, had but few cattle or horses on his place and does not know what he had in 1902.

States he does not remember how many stock E. Strom had in 1902, nor does he know how many he has now. (V. 49, 19473.)

States Mr. Kenneth Smith, complainants' witness, had

about seventy-five cows in late years, but he does not know how much stock he kept in 1902. (V. 49, 19473.)

States he does not remember what stock Geo. Parrott had in 1902, nor does he know what stock is on the place at the present time. (V. 49, 19475.)

States he does not remember how much stock was settled for on the Jones' estate in 1902, but they had quite a band in 1903, and he does not know how much stock there is there at the present time. (V. 49, 19476.)

States he does not remember how much stock Chauncey Beal had in 1902, nor does he know how much stock he has now. (V. 49, 19477.)

States he does not remember how much stock William Stevens had in 1902, nor does he know how much stock he has at the present time. States he does not know how much stock Frank Kreider had in 1902, nor does he know how much he has at the present time. (V. 49, 19478.)

The same can be said of Jos. Staffanson. (V. 49, 19479.)

States he cannot remember exactly how much stock Mr. Bielenberg had in 1902, but in the neighborhood of six hundred or more cattle, and about ninety head of horses, but he does not know what number he has now. In 1905 he states he counted eighteen mares there with thirteen colts. (V. 49, 19480.)

States he does not know how much stock Notestine had in 1902, nor does he know how much stock he has now. States John Furst has more cattle there now than he had in 1902, but admits the fact that perhaps some of the cattle on

the Furst place do not belong to Mr. Furst. (V. 49, 19481.)

States Wm. Staffanson had a few head of cattle and horses in 1902, but does not know what he has now. (V. 49, 19483.)

States Wm. T. Elliott and wife, had in 1902, about four hundred head of cattle, and that he counted two hundred and fifty head in their field last month, but does not know whether they are Mr. Elliott's cattle or not; now how long they have been upon Mr. Elliott's pasture. States he does not remember how much stock E. Staffanson had in 1902, and that E. Staffanson had left Deer Lodge Valley.

States that on the Norton estate they had over one hundred head of cattle and some horses in 1902, and that perhaps there are that many there now, but he doesn't know whether Norton owns them or not, nor where they came from. (V. 49, 19486.)

States he does not know what stock Fisher had in 1902, nor does he know what he has now. The same can be said of John Malingo. (V. 49, 19488.)

Says Mrs. Helen Johnson did not have a great many stock in 1902, but lately he had counted twenty-one head upon her pastures, but could not say that they belonged to her. (V. 49, 19489.)

States he does not remember the amount of horses that Chas. Jones had in 1902, nor does he know what stock he has at the present time.

States he does not remember the amount of horses that Whitcraft had in 1902, nor does he know how many he has now. (V. 49, 19490.)

The same as above can be said of the stock owned by John Martin, complainants' witness. Likewise the stock of Bart Para, complainants' witness. (V. 49, 19491.)

States that George Jacques, complainants' witness, has more horses and less cattle now than he had in 1902. States he does not know what stock Threlkeid had in 1902, nor does he know how many he has at the present time. (V. 49, 19492.)

He does not know how many stock Cosens had in 1902 or how many he has at the present time. (V. 49, 19493.)

In 1902 they settled with Jerry Ryan, complainants' witness, for something like one hundred head of cattle, but he does not remember the number of horses, and thinks Mr. Ryan, at the present time, has about eighteen or twenty head of horses, and that Mr. Ryan has sold his sheep to John Gertz. That in 1902 he did not have any sheep, Ryan. (V. 49, 19494.)

States he does not know how many horses Gregor and Chas. Schwend have at the present time, but in 1902 they had in the neighborhood of forty to fifty head. (V. 49, 19496.)

Does not know how much stock was settled for on the Leffring place in 1902, nor does he know the number there at the present time. The same can be said of the stock of Watson Bros. Does not remember how much Henry Hoffman had in 1902, but at the present time Mr. Hoffman has some horses, but he does not know whether he owns any cattle or not. (V. 49, 19497-98.)

Pat Lappin had, in 1902, something like ninety-six head of cattle, but he does not remember how many horses

nor does he remember how many cattle he has at the present time. (V. 49, 19499.)

States he was up Mill Creek a couple of times, and that perhaps he saw *a dozen head of cattle*, but he does not know who they belong to; he did not see any horses at all in the Mill Creek country. (V. 49, 19501.)

(NOTE—The record shows about 2000 head of stock on this range in 1902)

States he has a deed to two hundred and twenty-three acres of land on Warm Springs Creek, which he purchased some time last October, 1906, and he states he will own it when his debts are paid. He states this property is the Jake Stuckey ranch on Warm Springs Creek. *States that the Anaconda Company may take it*, but he bought it for himself, and that he paid \$12,500 for it. There is a little over one hundred acres of tillable land where hay and grain may be raised. It is all under fence. (V. 49, 19502.)

(NOTE—Since close of lease this land deeded by Miller to A. C. M. Co.)

States that the land that the company bought of Threlkeld is inferior to the Bliss ranch. (V. 49, 19504.)

(NOTE—Frank Threlkeld, complainants' witness, on page 976, V. 3, swears his land was worth, prior to the operation of the Washoe Smelter, \$50 per acre; that he refused \$9,000 for two hundred acres prior to the operation of the Washoe smelter.

Harvey Showers, complainants' witness, on page 6799, V. 18, testifies he offered Threlkeld \$80 per acre for forty acres of this land.

Harvey Showers, complainants' witness, states on

page 6800, V. 18, that Mr. Parrott sold the Anaconda Company, in the 80s, three hundred and twenty acres for \$16,000.

This land adjoins the Threlkeld and Shower ranches, and as Miller states on page 19504, V. 49, that the Bliss ranch is better land than what the company bought from Threlheld, still Miller has testified on direct (V. 49, 19444-45), that the Bliss ranch is only worth \$2500 for three hundred and twenty acres.

This class of testimony must convince the Court that Mr. Miller is trying to earn his slary.)

Lives on one hundred and sixty acres; but does not do any farming on his place. States most of the place was covered with tailings years ago, and *that it is a company place*. We don't farm outside of a little garden; we raise a few potatoes and currants. (V. 49, 19506.)

Is not familiar with any of the threshing returns of the Deer Lodge Valley during the years of 1901-2-3-4-5-6, and is not able to tell how much grain per acre the ground will yield by looking at it; he is not able to state the acreages in the different Smoke ranches; and is not able to state that there was one-third of the grain raised there in 1906 as compared with 1901. (V. 49, 19507.)

(NOTE—Miller, on cross-examination, is compelled to admit the above, although he stated on direct that crops were better in the Deer Lodge valley than they have been in fifteen years, and his last answer clearly shows that he knows nothing whatever about the acreage or the yield of grain in the Deer Lodge Valley.)

There is a great deal more hay raised in the Deer Lodge Valley now than there was in 1901. (V. 49, 19508.)

(NOTE—This statement of Miller's is contradicted by every witness that has been upon the stand. This

is just another one of his broad, sweeping statements.)

Says that Mr. Jacques and John Jones had about the best looking crop that he saw in 1906, of wheat, but he does not know what the yield was.

(NOTE—Both Mr. Jacques and Mr. Jones testifies to the decreased yield of their crops as compared prior to the operation of the Washoe smelter.)

Admits that he tried to buy a portion of the Bliss ranch eight or nine years ago. (V. 49, 19513.)

Admits that John Staffanson also tried to buy the Bliss ranch and that the *Bliss ranch lies very nice and that most of it is quite smooth; that there are irrigating ditches running through the place, and with very little work it could be easily drained.* (V. 49, 19514.)

(NOTE—There defendants' witness contradicts Traphagen, defendants' witness, and others who say the Bliss ranch is rough and hummocky.

Mr. Miller unquestionably knows the nature of this ranch, as to smoothness, as he owned the ranch adjoining it, and lived there for several years. He simply confirms the testimony of the witnesses for the complainant, and unquestionably the Court himself will remember upon his visit to this ranch it was one of the smoothest, level-lying places of meadow land in the State of Montana.)

Admits that some years ago they raised fair crops of oats on the Bliss ranch. (V. 49, 19515.)

On the Smith ranch, adjoining the Bliss ranch, they threshed as high as *sixty-five or seventy bushels of oats per acre the last year he was there*, and there is not any difference in the character of the soil on the Smith ranch

from that of the south field of the Bliss ranch. Also admits that he cut as high as two tons of hay per acre off of the Smith ranch. (V. 49, 19516.)

(NOTE—This was prior to the smoke period, that these crops were raised. This man's testimony simply confirms the testimony of complainants' witnesses.)

Admits that he has paid \$6.00 a ton for hay off of the Bliss ranch, to be fed to his dairy stock; also in previous years he had paid as high as \$15.00 for hay off of the Bliss farm to Dan James. (V. 49, 19517.)

Admits he has been in the dairy business for some eight or nine years in the valley, but had sold out his interest some time prior to 1901, and that *he went to work for the company in 1901 and has worked for them ever since.*

(NOTE—Here we see defendants' own witness testifying to the purchase of hay from the Bliss ranch, grown prior to the smoke injury, as high as \$15 per ton, fed to his dairy cows.

Take Mr. Wolfe's testimony, a man who is on the Bliss ranch at this time. What does he testify to? Testifies that he cannot subsist his stock, of some twenty-one cows, on the foddors grown upon this ranch; that he buys alfalfa from a distance and only feeds the hay from the Bliss ranch in small quantities and that he spreads it upon the ground and shakes it up, in order to let the dust fall out of it.

Quite a difference between the time Mr. Miller lived there when there was no Washoe smelter and the present time in the conditions of the hays on this ranch.

(See Prof. Swain's and Dr. Harkins' analyses of the hays and grasses on the Bliss ranch since the erection of the Washoe smelter.)

States there were quite a few dairies along Warm Springs Creek prior to the building of the Washoe smelter; Chris Jergenson, Stalman Lewis, Angus, John and Kenneth Smith, and Dan Thomas were also running dairies in 1902; Frank Threlkeld also milked a few cows; Bart Para also milked quite a few cows in 1902. (V. 49, 19518.)

States Byron Howells had a small dairy in 1902. (V. 49, 19519.)

States he could not say whether there were more than one hundred and fifty dairy cows on Warm Springs Creek at the present time, nor can he state many were there in 1902, but he does not think there *were over four hundred.* (V. 49, 19522.)

(NOTE—Defendants' own witnesses' testimony shows the decrease of over sixty per cent of the dairy interests in this vicinity, since the erection of the Washoe Smelter.)

States fall plowing is the worst thing you can do for sunflowers, as they come up thicker in the spring. Also that plowing land for sunflowers doesn't do any good; the more you plow them the more they will grow; you must weed them out by hand. (V. 49, 19523-19525.)

Also states when he was in the Bitter Root about seventeen years ago there were some very bad fields of sunflowers. "You break up a piece of land there and the next year you won't have any sunflowers; they don't seem to adapt themselves to the country there." (V. 49, 19427.)

(NOTE—According to Mr. Miller's ideas the farmers of the entire west have been wrong for the last forty years trying to obliterate the sunflowers by

plowing. The above statement of Mr. Miller's shows his absolute ignorance of farming.)

In answer to the question, "If the conditions of the Deer Lodge Valley warrant and justify complete farming of the lands in the valley," he states, "if a man will plow and work hard, he will get a great deal better crop than if he let it go the way they are now." (V. 49, 19525-19526.)

(NOTE—Disputes Dan James on the Bliss ranch, where he claimed that the plowing of the fifty acres of that ranch ruined it, but where K. Smith's testimony (V. 3, 896), shows as follows):

"Q. What effect did this cultivation have on the fox-tail?

A. Well, he raised this fine crop of hay and oats and he seeded it down to hay and alfalfa and clover, and when the alfalfa and clover was up maybe two or three inches—this was the time the smoke lay down ther, I spoke of this morning, burning the oats— *and it, at the same time, burned the clover and alfalfa and they never appeared any more, hardly any of it, and by spring that fine patch of grass that was there a year before, there didn't very much of it appear, and consequently the fox-tail comes in.*

Admits Frank Threlkeld's place is considered a better farming ranch than K. D. Smith's place. (V. 49, 19527-28.)

Admits Warm Springs Creek and vicinity is a good place for dairies as the feed always stay green from spring until it freezes in the fall. It makes a good pasture for cattle, and that is one of the reasons why the dairy men like to

go there; they have better and later feed than they would have on the hills. (V. 49, 19528.)

(NOTE—Mr. Miller's statement that this is an ideal dairy country on account of the grass staying green until it freezes in the fall, was unquestionably true prior to the operation of the Washoe smelter, but what does the evidence of all the men in this vicinity show? That they take their cattle up off of the meadows and pastures the latter part of August or the first of September, at which time, as the record will show, there is no frosts of any consequence occurring in the Deer Lodge Valley.

In order to bear this statement out, we refer to defendants' witness' testimony, Mr. Strain, who kept a weather record for some two years for the purpose of this case, and this record shows no severe frosts until in October.)

States that he bought the K. D. Smith ranch in 1887 or 1888; there was not anything on it when he bought it: the fences were all down and no house, and "I think I paid \$3,000 for two hundred and forty acres." (V. 49, 19529.)

Knows of no member of the Smoke Association who collected for live stock in 1902 that they did now own, nor does he know of any farmer belonging to the association who switched from one place to another in order to collect a second damage from the company. (V. 49, 19530.)

He, with Frank McCleary and Dr. Knowles, were perhaps some three months in the field, off and on, adjusting these live stock damages in 1902, and "I was employed by the A. C. M. Co." (V. 49, 19531.)

(NOTE—Paid damages to stock on every ranch now included in the Farmers' Association.)

States Dr. Knowles, State Veterinarian, was, he sup-

posed, *employed for the reason that he thought he would be absolutely fair in the investigations; that the company paid most of the people for their stock so reported by himself, McCleary and Knowles. States the cows spoken of in his direct testimony, as having died as the result of too much feed and water on John Bielenberg's place, were paid for by the company, Mr. Bielenberg getting \$850 for the loss—eight or nine cows.* (V. 49, 19533.)

States that the company threshed no grain on the company farms this year. (V. 49, 19534.)

(NOTE—Nor any year since 1902.)

He does not know how many tons of hay was cut off of Section Sixteen in 1905, nor does he know how much they cut off of their prize garden near the smelter in 1905. (V. 49, 19534.)

In speaking of the hay cut off of this garden there was quite a lot of hay cut off, but admits it was spotted. (V. 49, 19535.)

(NOTE—The evidence shows the defendants measured all the hay in the valley in 1905, and still Master conveniently knows nothing of the yield of the defendants' farms, of which he had charge. This class of testimony is absurd.)

States that in 1903 he does not think the company owned any cattle, and the first cattle they bought was the Statou cattle, and this was their first entry into the stock business since he has been in the valley. Later admits the Callen cattle were bought a short time prior to the Statou cattle. He does not know how many section of land the company owns in the Deer Lodge Valley. (V. 49, 19539.)

(NOTE—This witness for the defense, in the above statement, shows one thing—that the company were running Section Sixteen for purely experimental purposes, and to manufacture evidence to be used in this case; that they never owned a cow or any stock on this ranch prior to the purchase of the Callen cattle in 1905.

He does not know how many sections of land they own in the valley, but the record shows that they own over eight thousand acres, the principal part of which lies in the Deer Lodge Valley proper, east of the Washoe smelter.

(See Gillie, defendants' witness, testimony for this last statement.)

Does not know how many cattle the company had during 1906; they had one bunch of ninety head running on the big slum field; also had some thirty white-faced steers and other cattle that they were experimenting with. (V. 49, 19540.)

(NOTE—The defendants are the only ones who had more cattle in 1905-6; none of the farmers had.)

In answer to the question as to how much hay he bought in caring for these cattle, states, "We bought last year of Mrs. McGuire fifty tons." He does not know how much they bought of Threlkeld and Howard and does not know that they bought any of Staton. When he was in the dairy business he *fed mostly wild hay*; he fed a little alfalfa hay, but did not like it because the leaves fell off. (V. 49, 19541.)

(NOTE—Miller's testimony here shows that they only had about one hundred and twenty head of cattle, and still could not produce enough hay on Section Sixteen to feed them, but they bought fifty tons

of Mrs. McGuire; bought from Threlkeld, Howard and others.

He also states that when he was in the dairy business he fed mostly wild hay, and this wild hay, as the evidence of himself and others will show, was fed upon the immediate vicinity of the Bliss ranch, and he paid anywhere from \$8.00 to \$15.00 a ton for this hay, which at the present time, as the evidence shows, cannot be sold for over \$4.00 per ton, and very little of it at that.)

He has known the Daniel Murphy ranch since 1888, and admits that most of it has been cut every year, for hay, prior to the operation of the Washoe smelter, but believes there were some patches too wet to be cut. (V. 49, 19542.)

(NOTE—The evidence of Ralph E. Smith and others shows no hay cut on this ranch since 1902.)

He does not believe that the Murphy place was as wet last year as in former years, for the reason that a ditch running along the road had drained the place, but does not know that any hay was cut on the place last year; states there was some cut the year before but doesn't know how much.

He has known the Gibbs ranch since 1868; hay was cut there in 1902, and thinks hay was cut there in 1903. (V. 49, 19543.)

(NOTE—This ranch is abandoned, as is shown by the record, and still this witness, who has been actively engaged in this case since 1904, loses his memory here.)

There was no hay cut on Harvey Showers' place last year, nor this year. The Daniel James estate always cut hay prior to the erection of the Washoe smelter, and he

can see no reason why it could not be cut now if it were taken care of. Morgan Evans did not cut all of his hay last year. (V. 49, 19544.)

(NOTE—The evidence shows the hay that was cut on the Showers and James ranches could not be sold at all, even for \$2.00 a ton.)

Admits in 1902 he paid Staton \$7.00 a ton for his hay; also that they paid \$10.00 a ton for one stack. (V. 49, 19547.)

(NOTE—Staton's testimony (V. 17, 6372), shows this hay was all put in at \$10.00 per ton.)

States the company, after paying for the hay, gave some of it back to Mr. Staton.

(NOTE—Staton's testimony shows this hay was returned to him for excess feeding of these cattle—or fifty tons of hay.)

States he does not know whether it was customary, prior to 1902, to feed stock any hay when there was feed in the field and no snow. (V. 49, 19550.)

(NOTE—Here again Miller is dodging a question. He testified that in the early days cattle wintered all winter without hay in the swamp.)

He cannot give the number of ranches belonging to the Farmers' Association, which have been settled since 1883. (V. 49, 19552.)

(NOTE—The fact is there is only a few, as the record shows.)

He does not think Mr. Ryan had sheep in 1902, but that in 1904 and 1905—thinks it was in 1904—he made a claim to the company for losing sheep. (V. 49, 19553.)

The last heavy loss of stock in the Deer Lodge Valley from lack of winter feeding was in 1880, but does not think it is profitable to raise stock at the prevailing prices of hay. (V. 49, 19555.)

Admits that prior to 1902 good hay raised in Deer Lodge Valley would bring \$8.00 and \$10.00 a ton, and states that at the present time it is worth more. (V. 49, 19557.)

(NOTE—*Outside hay worth more, but valley hay can't be sold for near \$8.00 or \$10.00.*)

Does not know whether it was profitable to raise cattle in 1902, and does not know whether they could sell their hay or not. (V. 49, 19557.)

(NOTE—In the above statement Mr. Miller is confirmed by all of the witnesses, both plaintiff and defendants, as to the prices of hay in the Deer Lodge Valley prior to the erection of the Washoe smelter, and in his statement, where he says it is worth more now, meaning since the erection of the Washoe smelter, he is contradicted by every witness who has testified in this case as to hay prices.

The company, themselves, through Mr. John Thomas, purchased hay for a little over one-half the price Mr. Miller gives as was paid for hay prior to the erection of the Washoe smelter.)

Does not think there are five hundred head of horses in Anaconda. (V. 49, 19559.)

(NOTE—This witness admits there is not five hundred head of horses in the City of Anaconda. The fact of the matter is, there is not half that many, and still they argue to this Court that without the City of Anaconda the farmer of Deer Lodge Valley could get no market for their hay.

The evidence of Staton, Bielenberg, Elliott and the

Quinlans, complainants' witnesses, show that these four men, on an average, owned more stock and kept them upon their ranches, than the citizens of Anaconda owned, still they will try to convince this Court that without Anaconda as a market they would have no use for their hay.)

Does not know whether there is any difference between the price of Bitter Root, Bozeman and Dillon hay as compared with Deer Lodge Valley hay, but thinks it is worth about \$17.00 or \$18.00 a ton. (V. 49, 19560.)

(NOTE—This witness, by his testimony, shows that the price of outside hay of the same class and character was double what the Deer Lodge Valley hay will bring at the present time, when it CAN be sold at all.)

States he bought one hundred and seventy steers and one hundred cows with calves (seventy) from Peter Valiton; these were purchased on November 3, 1906, and they were moved into the valley a week or so after purchase. (V. 49, 19561.)

(NOTE—*These were the cattle that were shown to Dr. Pearson, defendants' witness, and Dr. Moore, defendants' witness, and different other experts from the company, and had not been in the "Smoke Zone" a month when seen by him.*

It renders the testimony of Dr. Pearson and others valueless, when they based their judgment as to live stock conditions in the "Smoke Zone" on the condition of these cattle.)

Re-Direct Examination.

States these cattle were placed on different company ranches in Deer Lodge Valley. (V. 49, 19563.)

States the purpose of the company in buying in live

stock was that they had a lot of inferior hay; some of it got wet in putting it up, and had to purchase stock to eat it up, and we wanted to see whether they would get fat and live upon the land without dying. (V. 49, 19564.)

(NOTE—But still stock raising cannot be carried on at a profit.)

Before the O. S. L. was built states that hay was very high; and he has sold loose slough hay for \$30.00 per ton. (V. 49, 19566.)

In regard to what was fed to the Staton cattle, when they were brought to Section Sixteen, states that he does not know, for the reason that he went back to Mr. Staton's after hogs, but the next morning he told Mr. Cook to haul in plenty of hay from the stack bottom and place it in the corral so that the cattle might have a good bed to lie upon; don't know what he hauled in, but he must have hauled quite a bit, as they were very hungry, and went after that poor hay in great shape; it was all poor hay for cattle; never fed any good hay to them as this hay got wet in maturing. (V. 50, 19569.)

(NOTE—Changed his mind over night. This is what he stated on direct examination):

States they looked as though they all wanted hay. They ate four loads of hay that night when we pitched them hay. (V. 49, 19430.)

Re-Cross Examination.

States that Mr. Valiton ranged the cattle he purchased from him above Deer Lodge below John Bielenberg's and next to Conley and McTagues' ranch. (V. 50, 19570.)

STATES THAT IN 1902 HE ALWAYS LOOKED UPON A SORE-NOSED HORSE AS A SMOKED HORSE, AND PAID FOR IT. (V. 50, 19571.)

Admits that the company paid John Welton \$225 damages for a pair of horses that looked well to him, and that on cattle, paid from one-half to one-third value, down to \$5.00 a head damage. (V. 50, 19572.)

BEN CROSSWHITE, Defendants' Witness:

Direct Examination.

Has resided in the Deer Lodge Valley or vicinity since 1877; the first work he did was to work upon a ranch at the edge of Deer Lodge City. (V.46, 18073.)

He worked on the Bliss ranch about two years and later worked on Kenneth Smith's place, and various ranches of the Deer Lodge Valley. (V. 46, 18075.)

In early days stock raising was the principal industry, and at that time stock ran upon the range. They would not feed them much hay in the winter; there was a good many live stock in the valley at that time. (V. 46, 18078.)

In early days there was a little ground broken up around the river bottom, upon which a little grain was raised, and a few potatoes, but they didn't raise potatoes then like we do now. (V. 46, 18080.)

States that since 1877 the live stock industry has been decreasing most of the time, but this is disputed by Crosswhite on his cross examination (V. 46, 18189), when the question was asked him: "If cattle were not decreasing pretty rapidly since 1902," he answered, "I don't know about that; cattle are going out and coming in; these cat-

tle have always been taken out of there to pasture at other places and brought in there in the winter to feed." In answer to the following question, "Will you state there is more cattle in Deer Lodge Valley now than there was in 1900, 1901 and 1902, that is owned by the farmers?" answered, "I would not say there was more, but then from going through the valley and taking the cattle you see on the ranges, I can't say there is much difference; there might not be so many, as I stated before, but the ranches have been getting out of cattle. This statement is disputed again by Jesse Miller, one of the defendants' witnesses, who on page 19443, V. 49, states there are as many cattle in Deer Lodge Valley right now as there were in 1900 or 1901, but there are not as many horses.

(NOTE—The Court will please take notice that these two witnesses are hired for the purpose of testifying to the conditions in Deer Lodge Valley, by the defendants, and will also notice they have been worthy of hire, in being willing to testify to anything that would be beneficial to the defendants and detrimental to the plaintiffs, and especially Mr. Crosswhite, as will be shown on page 18197, V. 46, on cross examination when the following questions and answers were given):

Q. What are your duties, Mr. Crosswhite?

A. Well, last summer my duty was surveying through the valley and classifying land (here he qualifies as a civil engineer for the purpose of surveying the lands for the defendant company), and this summer I have been doing different work. I have made some trips around the valley with some of the professors when they were working for the company, and have shown them through the valley and

other places; going with them and looking at the conditions of the valley.

Q. These professors that you speak of going out with, were all connected with the suit, were they?

A. *They were working for the company.*

Q. *And these services you speak of were all for the company?*

A. *For the company; yes, sir.*

Q. In other works you have been employed by this company ever since you went to work for them in matters pertaining to this suit, have you not?

A. *Practically pertaining to the smoke case; yes, sir.*

Q. And have been quite interested with them in this suit?

A. I am generally always very much interested in any work that I do.

Q. Was it a part of your duties to try to have members of the association withdraw from the association?

A. No, sir. It was not.

Q. You did it, did you not?

A. I told my brother-in-law to get out of the association. (Meaning Chris Jergenson.)

Q. And did you not also tell Mr. Lappin?

A. Mr. Lappin? I don't remember as I ever told Mr. Lappin to get out of the association. Mr. Lappin asked me what I thought about the association and I will tell you what I did tell him. *I told him that I thought the association was a graft, and that he was in bad company. I told him that.*

Q. It was through your influence that your brother-in-law withdrew from it?

A. It was through my influence, with his mother, a good deal probably that he withdrew, but I told him to withdraw; that he had no business in there; that he had no kick coming. (See the testimony of Chris Jergenson.) (V. 46, 18198.)

(NOTE.—Now after carefully taking into consideration the position with the company that Mr. Crosswhite claims he holds, we will call the Court's attention to *John W. Collin's testimony, State Stock Inspector, plaintiffs' witness, who has no interest in the case*, who we might say, if influence at all would lean towards the defendant companies, knowing of the powerful influence that they wield in the State politically and otherwise—when he testified on page 2531, V. 7, as follows, on cross examination: "*I think it is right for me to make the statement under oath that there is nothing to see down in Dcer Lodge Valley now; there is not any stock left there (note this applies to range stock) and know at the same time that I am telling nothing but the truth.*"

I know that I cannot ride on that range and find range stock and horses and cattle, as I used to be able to find them ten or twelve years ago; I know that the cattle are dead; I know there was something wrong with them; I have seen it. That fact alone would lead me to believe that they had suffered a loss of stock—could not make anything else out of it.)

In early days there were scarcely any fences, only along the river bottom, but at the present the valley is all fenced; lots of the hills are fenced too—fences running back into the mountains on both sides. (V. 46, 18082-83.)

When the fencing began it ran the cattle out; then the people went to raising grain, and they got so much under

fence that their water gave out; then they started in to raise hay. (V. 46, 18084.)

(NOTE—Now we will see how true these statements are: When Mr. Crosswhite on cross examination was asked to state how many of these ranches had been fenced *since 1883, the year the first smelters were built at Anaconda*, as by his direct testimony he has tried to convey the impression that all of the ranches had been fenced, and the lands taken up after the smelters were built at Anaconda. He was asked to name individually, *if he could*, any of the farmers in the Smoke Zone or outside of the Smoke Zone in Deer Lodge Valley who had fenced their ranches, and could not name but *a very few* that he *guessed* had fenced up the lands in the valley since that time.

Then we will call the Court's attention to the way he evaded, or tried to evade, the question, when it was put to him in a general way, as follows):

Q. I will ask you, Mr. Crosswhite, to mention the ranches in Deer Lodge Valley that have been fenced since the works started in 1883. (V. 46, 18175.)

A. (*No answer.*)

Q. Can you answer that question, Mr. Crosswhite?

A. What is the question?

Q. The ranches that have been fenced in the Deer Lodge Valley in 1883?

A. *No answer.*

Q. Question again. Can you state, Mr. Crosswhite?
(V. 46, 18177.)

A. *Can I state what?*

Q. The lands that have been fenced since 1883. *Give about the number of acres if you can.*

A. *I couldn't give that.*

Q. Well, can you give anything, Mr. Crosswhite; can you give one ranch in the valley that has been fenced since that time?

A. Since when?

Q. 1883?

A. Yes. I can give part of the ranches that have been fenced.

Q. I asked if you can give one ranch; name one.

A. Well, Tom Elliott has fenced land since 1883.

Q. Can you name any other ranches?

A. Bielenberg fenced some since 1883.

Q. How much? (V. 46, 18177.)

A. Considerable.

Q. How many acres?

A. I don't know; a good deal.

Q. Can you give any other rancher that has been fenced his land since that time?

A. Well, all those ranches along Modesty, I believe (another guess) above the Schwend place there, and the Snell ranch, that was fenced since 1883.

Q. Name the land, if you can?

A. Well, there was a single section that was fenced since 1883, that they have torn the fences away from now; and the Stevens estate fenced in a section there since 1883, and E. Staffenson fenced in some hills there since 1883.

Q. Then that is all the ranches that you can think of? (V. 46, 18178.)

A. Oh, there are a great many more, but I can't think of them all right now. I gave them yesterday when you asked me about them.

. Q. *Could you give an estimation of the acres in any way?*

A. *I have told you about three or four times that I couldn't.*

(NOTE—We think that Mr. Crosswhite's testimony, a defendants' witness, without a doubt, substantiates the Master's findings No. 15, as follows:

“That many of the said farmers and ranchmen have settled upon and own lands injuriously affected by the said smelter fumes in the Deer Lodge Valley prior to the year 1870, and have continuously been residents thereon up to and including the present time, and long prior to the conducting of any smelter plant in the said region.”

The Court will readily see by following the testimony of both Mr. Miller and Mr. Crosswhite that they will make broad sweeping statements on direct examination, but that they have fallen completely down on cross examination.)

Most of the land in Deer Lodge Valley is capable of being irrigated, until you get back into the mountains; you can irrigate anywhere if you have the water, but the water ain't there and you cannot get it; there is enough water for the cattle though; only fencing has made them go a little farther to get their water supply. (V. 46, 18085.)

(NOTE—Another sweeping statement made by Mr. Crosswhite when he was upon the witness stand with the map of the Deer Lodge Valley before him that showed 13 streams of water coming into the Deer Lodge Valley, and there is not a witness among the farmers in the Deer Lodge Valley that has sworn that he was short of water except George Parrott, complainants' witness, who on page 3163-3, V. 8,

states as follows: "Had plenty of water. I have one of the oldest water rights on Mill Creek, but the last few years the company's men (meaning the defendant companies) have been taking the water, when I did not have any."

When the Anaconda and Butte markets started, this started a market for the hay. Cattle was not such a good price, so it didn't pay to raise cattle, and they sold their hay, and this has been the practice pretty much ever since. (V. 46, 18086.)

(NOTE—Again this statement of Mr. Crosswhite's is disputed by himself on page 18191-2, V. 46, on cross examination, when he states in answer to the following question):

Q. About what was the market price for hay at that time, if you know, in Deer Lodge Valley? (Meaning before the smelters started, as the testimony before shows.)

A. I seen hay in Deer Lodge Valley when I first came to Deer Lodge Valley, that would sell in Deer Lodge there for \$5.00 and \$6.00 a ton (that was in 1877; page 18074, V. 46.) Butte started up and I have hauled hay from the Bliss ranch and got as high as \$40.00 a ton for it in Butte. (All of the witnesses show that there was more cattle in the country at that time than at the present time.)

Q. Is it not a fact that the farmers sold all the hay they had to sell prior to the erection of the works?

A. They sold all the hay they had, but they did not put up very much hay in the valley then; and they are putting up a great deal more hay in the valley now than they did then.

Q. But they had a market for all they put up, didn't they?

A. *They have always had some kind of a market, or fed it; they had stock here to eat it, and they did not feed their stock quite enough then, either. The stock would have done a little better if they had given them a little more hay, especially a few winters there.*

Q. *Hay was pretty scarce at that time, was it not?*

A. *But stock was plentiful thought.*

(NOTE—By this testimony it will also show the Court that farmers had a market before the works were ever thought of at Anaconda.)

As farming is pursued year by year the blue joint grass played out, and fox-tail appeared. Yet admits there was always some fox-tail in the valley; and more weeds have appeared, and that the quality of the wild hay has deteriorated. (V. 46, 18087.)

(NOTE—But only deteriorated since the erection of the Washoe smelter, as even defendants' witness, Miller, states he preferred wild hay to alfalfa for his dairy cows.)

States the Bliss place has been fairly well kept up until the last three or four years. Says the Daniel James estate has been left to go to wreck, and has not been farmed or anything done for the last two years. (V. 46, 18088.)

(NOTE—Mr. E. Staffanson, plaintiffs' witness, whose wife owns this estate, testifies on page 2014, V. 8, that in 1902 thirty-five acres of oats yielded a total of 200 bushels; in 1904, from sixty-five acres of oats and wheat only got two hundred and sixty-five bushels.

Hay crop decreased from 118 tons in 1903 (V. 8, 2915), the year the smelter was closed, to fifty tons the

following year, 1904. His stock died on the pasture whenever turned there.

Tries to sell his hay, but cannot sell it even for \$4.25 per ton. Mr. Staffanson, on page 2925, states that he and his family moved from the Deer Lodge Valley and bought wild land in the Yellowstone Valley, and paid \$36.00 per acre for it.

Doesn't the above statement of facts account for the desertion of this ranch?)

On the Bliss farm there was as good farming land as was along the creek. Five years ago the Bliss farm was in pretty good shape. The plowing that the Bliss farm received at the hands of Kenneth Smith did not do it any good, and encouraged fox-tail; states he left it all rough, and before it was nice smooth ground. Chris Jergenson's place, he states, was a farm well farmed. (V. 46, 18090.)

Kenneth Smith, plaintiffs' witness, claims on pages 790-1, V. 3, there was no fox-tail to speak of on the Bliss ranch except on the land that had been plowed up and *where the smoke killed the new seeding of tame grasses.*

(NOTE—Then why has it been such a detriment to the Bliss ranch to plow up part of it, as it has seemed to be the bone of contention by Crosswhite, Miller and nearly all of the employed witnesses of the defendants, when Jesse Miller, defendants' witness, claims on page 19525, V. 49, in answer to the question, "If the conditions of Deer Lodge Valley warrant and justify complete farming lands in the valley," answered, "If a man will plow and work hard he will get a great deal better crop than if he lets it go the way they are now. And still, at the same time, because they plowed some of the land on the Bliss ranch, the company's witnesses try to show that it completely ruined this ranch.)

The Morgan Johnson place is well kept up; then there is Mr. Hengle's place—that is well kept up. Also mentions Mr. Bielenberg, Elliott, Jacobson, Jacques and Steve Horvath as having ranches well farmed. (V. 46, 18091.)

(NOTE—Morgan Johnson's place, mentioned by Mr. Crosswhite, is the Angus Smith farm that Mr. Smith swore to on page 697, V. 2, *that Mr. Scallion and Mr. Dunlap*, the company's officials in the year 1902, acknowledged to Smith that the place was injured so that he (Smith) could not run his business, and they offered to buy it out, but later refused.

On page 743, V. 2, claims that he spent over \$5000 since the smoke trouble trying to make a success of it and found he could not. On page 720, V. 2, states that Morgan Johnson, who has it under lease from Mr. Smith, wanted to throw up the lease, and Mr. Smith refused to let him do so.

And the other ranchers mentioned on page 18091, V. 46 by Mr. Crosswhite as having well kept ranches, are the ones the company's attorneys have tried in their argument to show the Court they could not raise crops on account of the scarcity of water.)

The ranches in the valley that receive proper attention, their crops look well and *it is his opinion* that within the last few years, and especially last year, where the ranches had proper attention, the crops have not been better in the past ten or fifteen years than they were in the past two years. (V. 46, 18091.)

(NOTE—These ranches undoubtedly had proper attention, as Mr. Miller, defendants' witness, would state, by plowing up the ranches and working hard, which Mr. Miller and Mr. Crosswhite claims has ruined the Bliss ranch.

In answer to the foregoing paragraph, Mr. Cross-

white, "that the crops have not been better in the past 10 or 15 years than they were in the past two years," will call the Court's attention to the many witnesses who have testified to the loss of crops in the past two years.)

In 1905 the condition of the live stock in the Deer Lodge Valley was as good as it has been in the last 15 years, and he saw no unusual sickness *except the sore nose*. (V. 46, 18093.)

(NOTE—Mr. Crosswhite here finds no unusual sickness except the sore-nosed horses, which has been shown by the testimony occurs only in Deer Lodge Valley and Great Falls, where like smelter conditions exist, and we think we have already quoted testimony from the defendants' witnesses disputing the conditions in the Deer Lodge Valley as to stock losses and abnormal sickness.)

Admits the Fifer place is where they used to raise such large grain crops. (V. 46, 18099.)

States Mr. Hammer put in a little crop there, but it didn't amount to much. (V. 46, 18100.)

Gives the valuation of the lands of Deer Lodge Valley—first, bottom or meadow lands, not worth over \$25.00 per acre. (V. 46, 18102.)

States that he does *not own a foot of land in the Deer Lodge Valley, and that he sold his property about six years ago*. (V. 46, 18115.)

There are quite a few creeks running through Deer Lodge Valley, viz.: Dempsey Creek, Race Track, Modesty, Lost Creek, Warm Springs Creek, Mill Creek and Willow Creek. (V. 46, 18116.)

States the Daniel Murphy place was taken up before he

came to the country; also that of William J. Evans. (V. 46, 18116-7.)

The old Ford ranch was taken up before he came to the country. James Bennett and Morgan Evans took up their lands in about 1887 or 1889. The Dave Scott place was settled before the erection of the smelter. (V. 46, 18118.)

Cannot state when the Jos. Saville ranch was taken up. The Wm. Parrott ranch was taken up when I came to the country; also Chas. Rivers' ranch; likewise Peter Staton's ranch. (V. 46, 18120.)

Wm. Evans' ranch on the bench was taken up before the smelter was built, and Hiram Staffenson's ranch was taken up before the smelter was built. (V. 46, 18121.)

Mrs. Holtz's ranch was taken up when he came to the country; also Geo. Cummock's ranch. Griffeth's ranch was taken up a good many years ago. Chris Jerguson's ranch was taken up before the smelter was built. (V. 46, 18122.)

Steve Hovarth's ranch was taken up before the smelter was built. States that John Bohn's ranch was taken up after the smelter started, but he does not know what year. (V. 46, 18124.)

Luke and Bert Talbot ranches were taken up before the smelter was built. States that the Byron Howell, complainants' witness, place was taken up before he came here. Also the Mary Harris ranch. (V. 46, 18125-6.)

States the Chas. Rivers ranch was taken up when he came to the Valley; states Walter C. Staton took up his place in 1883. (V. 46, 18127.)

Turkleson's ranch was taken up some time prior to the

erection of the smelter. Emanuel Strum's place was taken up when he came to the country. (V. 46, 18130.)

K. D. Smith's place was taken up before the erection of the smelter. John Quinlan's ranch was taken up before he came to the country. (V. 46, 18130.)

States that Allan was living on his place in 1880, and this was before the erection of the smelter. Geo. Parrot's place was taken up when he came to the country. The A. J. Jones place was taken up when he came to the country. (V. 46, 18131.)

The Wm. and Geo. Johnson place was taken up when he came to the country; also Mrs. L. J. Hensley's ranch. The Thos. Boland ranch was taken up when he came here; Beale's ranch was taken up before the erection of the smelter. (V. 46, 18132.)

States that Henry Mason's ranch was taken up before the erection of the smelter; also the William J. Stevens ranch. The Tremblay ranch was taken up very early and thinks it was before the erection of the smelter. (V. 46, 18133-4.)

States a portion of the Jos. Staffenson ranch was taken up before the erection of the smelter. (V. 46, 18135.)

States the Bell estate is a very old ranch, and it may have been taken up before the erection of the smelter; also the greater part of Mr. Bielenberg's ranch was taken up before the erection of the smelter. (V. 46, 19136.)

Most of the B. F. Notestine's place was taken up before the erection of the smelter. (V. 46, 18137.)

The greater part of J. Furst's ranch was taken up before the erection of the smelter. (V. 46, 18138.)

The Andrew Peterson ranch was taken up before the erection of the smelter. (V. 46, 18139.)

Joe Jacobson's ranch, or the greater part of it, was taken up before the erection of the smelter. (V. 46, 18140.)

The greater part of Mr. Elliott's ranch was taken up before the erection of the smelter. (V. 46, 18141.)

The Quinlan ranches were taken up prior to the erection of the smelter. (V. 46, 18142.)

The Peter Staffenson ranch was taken up before the erection of the smelter; also the Harvey Showers ranch. (V. 46, 18143.)

States the E. J. Evans ranch was taken up about the time the works started; the Norton ranches were taken up before the works started. (V. 46, 18144.)

The John Staffenson ranch was taken up when he came to the country. The Donnich ranch—a portion—was also taken up before the erection of the smelter. Robt. Fisher's ranch was taken up in 1882. (V. 46, 18145.)

The Talbot ranch was taken up very early. Ellen J. Johnson's ranch was taken up before the smelter started. (V. 46, 18146.)

A portion of the Hengle ranch was taken up before the erection of the smelter. (V. 46, 18147.)

The Peter Johnson ranch was taken up before the works were thought of; also the C. B. Jones ranch was taken up before the erection of the works. (V. 46, 18148.)

The Bart Para ranch was taken up when he came to this country. Derosier's ranch was also taken up before Anaconda was started. (V. 46, 18149.)

Geo. Jacques' ranch was taken up before the erection

of the smelter; also L. E. Couzens' ranch. (V. 46, 18150.)

A portion of Jerry Ryan's ranch was taken up before the erection of the smelter; also the Hardenbrook ranch. (V. 46, 18151.)

The W. P. Roberts ranch was taken up before the erection of the smelter. (V. 46, 18152.)

Schwend's ranch was taken up about the time the smelter was erected; Angus Smith's ranch is about one of the oldest ranches on Warm Springs Creek. (V. 46, 18153.)

Leffring's ranch was taken up before the erection of the smelter. Watson Bros.' ranch was also taken up before the erection of the smelter. The Daniel James ranch was taken up when I came to this country. (V. 46, 18155.)

Henry Hoffman's ranch was taken up before the erection of the smelter. (V. 46, 18156.)

Admits on page 18161, V. 46, that most all of the range east of Deer Lodge River is open range.

(NOTE—Clearly showing the settlement and fencing of the valley *prior to any smelter at Anaconda*, and as the farmers had large numbers of cattle and horses at the time of the building of the Washoe smelter and done no fencing since that time, their theory of fencing destroying the live stock industry falls to the ground.

Mr. Crosswhite also states on page 18089-90, that the Daniel James estate has been let go to wreck and has not been farmed or anything done for the last two years. We will call the Court's attention to the fact that that is not the only farm that has gone to wreck in Deer Lodge Valley and will quote from the evidence of Ralph E. Smith, one of the defendants's witnesses, which is as follows, on cross-examination):

R. SMITH, Defts. Wit. :

There is no farming on the William James Ranch, or the Daniel James Estate Ranch; there is no attempt being made to raise crops on these ranches. (V. 38, 14782.)

Have been on K. D. Smith's place, there were no crops on it—just grass. (V. 38, 14937.)

Gerrard's Ranch—no crops of any kind on it.

The Hamilton ranch—simply looked at the place—not cultivated—abandoned—large piece of land. (V. 38, 14943.)

Helen Johnson—this ranch practically abandoned. (V. 38, 14956.)

Bart Para's ranch—no crops on the place. (V. 38, 14962.)

No cultivation at the Gibbs ranch. (V. 38, 14805.)

The Mary Harris ranch is entirely uncultivated. (V. 38, 14814.)

Byron Howells place of half a section—no crops. (V. 38, 14818.)

Joe Staffanson's place—uncultivated and unirrigated. (V. 38, 14819.)

The Levengood place—poorly cultivated. (V. 38, 14820.)

No cultivated land on Hensley place, outside of wild hay. (V. 38, 14821.)

NOTE—Here we would like to call the Court's attention to matters that probably are outside of the record but we believe the Court can take judicial notice of them for the reason that they have happened since the plaintiff closed his case, but are pertaining to Deer Lodge Valley; and taking into consideration the fact that the Defendants invited the Court to investigate

the conditions in Deer Lodge Valley and felt somewhat hurt because the Court would not further give his time in visiting the Defendants' Fair (known as the Deer Lodge County Fair), and as stated above, might give us to believe we have a right to call the attention of the following members of the Deer Lodge Valley Ass'n and some of the members of the families of said association, witnesses who testified in this suit, and others living in Deer Lodge Valley who have departed this world, showing a death rate of human beings almost as great as the stock losses in comparison with the number of stock kept there in late years. They are as follows:)

David Scott, George Jacques, I. W. Farewell, A. N. Aylesworth, Dan Murphy and Joseph Jolley, members of the Deer Lodge Farmers' Association, Mrs. Couzins, Mrs. Levengood. Mrs. Joe Staffanson, Mrs. Wm. J. Evans, wives of members of the Association, Charles Para, Joseph Jacobson, children of members of the Association, Morgan Evans George Jacques and Dr. O. Y. Warren, witnesses who testified in this case, and J. W. Stork, Jacob Stuckey, Mrs. Wm. Buck, Mrs. Dr. Leahy, E. Gerrard, Mrs. Brown and Mrs. Williams, living in Deer Lodge Valley, making in all twenty-one who no longer care whether their rights are infringed on by the Defendants, and whose wrongs can only be adjusted by a higher Court.

DAN THOMAS, Defts. Wit.:

Direct Examination.

Has been employed by the Company. (V. 45, 17891.)

States he had lots of experience with *sore noses* in 1902.

States there is NO PARTICULAR TIME FOR the occurrence of sore nose, but it appears mostly in the Fall and Winter. (V. 45, 17922.)

(NOTE—Here Defts. own witness kills the defense theory that the sore nose is a seasonable disease.)

States the horses he bought were turned out on Sec. 16 and fed hay, and they were fed hay in June after the grass was green. (V. 45, 17924-5.)

States he has lived in the Deer Lodge Valley since 1865. (V. 45, 17925.)

States the principal industry from 1865 to 1880 was stock raising, and that the stock ranged upon the hills around Anaconda,—Willow Creek, Lost Creek and Race Track, and that in the early days they wintered in the swamps without hay. (V. 45, 17926.)

States the live stock began to decrease between the years of 1879 and 1881, and in early days there were quite a good many sheep, but at the present time the only sheep in the Smoke Zone are owned by Hempsted and Boyle and Jahnson. (V. 45, 17828-29.)

(NOTE—Hempstead and Boyle were not damaged by the smoke. Do not belong to the Farmers' Association, and never made any claim.)

George Johnson, although a member of the Farmers' Association, ranges his sheep entirely out of the Smoke Zone, as shown by the evidence of John Homner, Defendants' Witness, page 7435, V. 19; they range on the east side of the river below the French Crossing.

Staton's testimony, giving the Smoke Zone by townships, excludes this land from the Smoke Zone of the Deer Lodge Valley.

States he farmed the Bliss ranch from 1876 to 1881 and then it was sold to Dan James. (V. 45, 17932.)

States he cut his hay *on his place every year until 1905, when it was not cut*; yet in 1896 he cut 103 tons on this same place. (V. 45, 17936.)

States that in Deer Lodge Valley there is probably, at the present time, *about 2500 or 2000 head* of live stock and this *is on ranches down as far as Peter Vallatin's*. (V. 45, 17938.)

(NOTE—Which includes the entire smoke zone.)

States it has been four or five years since he has been over the ranges. (V. 45, 17939.)

(NOTE—This shows he knows nothing of range conditions.)

States his neighbors, in 1902, lost many horses and cows, and that he had stock, and sustained no losses.) (V. 45, 17940.)

(NOTE—He was in the Dairy Business and thus escaped actual death of any stock, nevertheless the Deft. recognized and paid for *Damage* to his stock in 1902.)

States he was sent out to purchase stock as cheaply as possible, and for the purpose of an experiment, and paid all the way from \$10.00 to \$50.00 per head. (V. 45, 17941.)

States he purchased 12 head of stock from Granite, and 6 head from Silver Bow Counties. (V. 45, 17960.)

States he purchased 6 head from Hickey Bros. (V. 45, 17963.)

States he heard some of the sheep died on Sec. 16. (V. 46, 17976.)

Admits that some of his horses which he sold to the Company in 1906 had sore noses. (V. 46, 17977.)

(NOTE—Quit Farming and Dairy Business and went to work for Deft.)

States that in 1906 there were no sheep on the west side of Deer Lodge Valley, but Hempsted & Boyle had some *on the east side.* (V. 46, 17980.)

(NOTE—Hempstead and Boyle out of Smoke Zone.)

States Hempsted & Boyle and Johnson range their sheep east of the Deer Lodge River. (V. 46, 17982.)

States the *Company bought about 350 head of stock lately.* (V. 46, 17986.)

States that on the Evans Field, where Montgomery had his beef cattle, and where some of these cattle died, that there was a good crop of hay and a good stand. (V. 46, 17988.)

(NOTE—Hay not cut.)

States that Brownlee and Rees bought the hay on the Showers place in 1904, but only a few jags were hauled away by Percy Ingalls, *and that the rest of the hay is on the ranch yet, and in 1905 the hay on this ranch was not cut, yet the hay crop looked all right and it was a good crop.* (V. 46, 17990.)

States the crop in 1904 (hay) off the Showers place did not sell, and is on the place yet, and on the place where he lives *he did not cut the hay in 1905, but cut it in 1904, and has some of it now, and admits he has stock, and has been buying hay for the reason that the horses would not eat the hay put up in 1904 on his place, and that prior to the erection of the smelter his stock never refused to eat the hay grown on his place, and that the hay grown on the Dan James place (Bliss farm), prior to the erection of the*

Smelter, was good hay, and that it was always cut and had a ready market prior to 1902, and since that time it has been unsold. (V. 46, 17992-3-4.)

He grew a good crop of oats in 1903 and cut it for hay on his farm, but did not put any in in 1904, nor 1905, and he has been living on the place all the time. (V. 46, 17999-18000.)

States he does not know of any one in Deer Lodge Valley who are endeavoring to raise stock, except the Company on Sec. 16, and states the stock the Company has would make up for many of the small ranches of Deer Lodge Valley. (V. 46, 18000-1.)

States that the steers on the Bliss farm were scouring in the month of July, 1906, and he spoke to Dr. Gardiner about it, and Dr. Gardiner stated "Well, I will look after them for a little while, you need not go," and the next time I saw them they were all right. (V. 46, 18005.)

(NOTE—Evidence of many witnesses of the defendants in regard to the scouring of the Bliss steers.)

Admits stating that he could not make a living on the ranch he now lives on. (V. 46, 18006.)

(NOTE—One of the best 160 acres in the Valley and one of the first settled ranches in Montana.)

States he offered his horses to D. D. Walker for \$15.00 per head, and says they were damaged and no good. (V. 46, 18008.)

(NOTE—This was in 1905.)

Never saw Deer Lodge Valley look much better than it did last year. States the D. L. Valley farmers are charging \$10.00 and \$12.00 a ton for their hay, and his boys,

at the same time, are paying \$18.00 and \$20.00 per ton for outside hay. (V. 46, 18010.)

Admits he might have told Jack Martin, in 1904, that the smoke had ruined the Valley and the Company would have to pay for it. (V. 46, 18012.)

Does not think the vegetation of the Deer Lodge Valley is hurt much by smoke this year (1906.)

(NOTE—If that is the case and hay is worth \$18.00 to \$20.00 a ton shipped in, why did Mr. Thomas not cut his hay crop in 1906. His testimony shows he cut his hay in 1904-5 and has some left yet. Does this last statement look reasonable “no damage to the crops from smoke this year, 1906,” and still won't harvest his crop, employed by Deft. to assist in this case. Jno. P. Thomas, Deft. Wit., says this ranch is one of the best and one of the first settled in D. L. Valley.)

FRANK M'CLEARY, Deft. Wit.:

States he has been employed by the Company since 1902. (V. 46, 18017.)

Of the horses that he bought there are some 23 or 24 alive on Sec. 16. (V. 46, 18024.)

States he was one of the appraisers with Jesse Miller and Dr. Knowles, in adjusting damages in 1902. (V. 46, 18036.)

States animals that he purchased were turned out on the pasture of Sec. 16, and give nothing. (V. 46, 18039.)

17925, V. 45, were fed hay.)

States in regard to the experimental horse that after the first one was out a day or so his nose filled up with dust. (V. 46, 18044.)

Cross-Examination.

States the Threlkeld horse had a sore nose on the Company place on *April 6th*, and it looked like the *sore nose of 1902*. (V. 46, 18046.)

States in regard to the experimental horse, that the next day he and Dr. Gardiner went down and *got the horse in* and looked at his nose, and that he didn't keep the horse in the barn, and the horse was running on pastures of Sec. 16, and also states the second experimental horse was turned out on pasture and that all of them were turned out on pasture, and that he is positive that they were not kept up in a corral and fed hay, and is positive that the experimental horses were turned out on pasture and driven up to be examined. (V. 46, 18048.)

(NOTE—Gardiner's, Detf. Wit., testimony in regard to these experimental horses where Gardiner swears they were kept up off of the pastures, it shows Gardiner's inoculation experiments a fake.) (V. 46, 18050.)

Sates the Williams Estate, in 1902, had 300 or 400 head of stock, and at the present time there is perhaps 30 head of horses on the place. (V. 54, 18063-4.)

(NOTE—More stock than is now owned by all the farmers in that vicinity.)

States the sore nosed horse in 1902 was considered a smoked horse and paid for (by Defendants.) (V. 46, 18066.)

States he saw sore nosed horses on Sec. 16 in August or September, 1906; also some n June, 1906. (V. 46, 18068.)

Admits he has been told any time he wanted to see the

Farmers' stock he might do so provided the farmers had a representative along, and this was in 1906. (V. 46, 18068.)

ALVA COOK, Deft Wit.:

Lives on Section 16, Company Experimental Farm. Took charge of the ranch in April, 1903. (V. 46, 18243.)

Callen cattle came to this ranch June 11th, 1905. Cook states some of them were very thin; some lousy. (V. 46, 18248.)

Did not let these cattle graze only one hour in the forenoon, and the same length of time in the afternoon, as we wanted to fill them up gradually. (V. 46, 18249.)

These cattle were pastured in a hay field. *Fed them nothing but pasture*, until Fall. They would not eat bran. Opend their mouths and put it in and let them taste it, and then they would not take it. (V. 46, 18313.)

(NOTE—We here wish to call the Court's attention to some of the evidence regarding these cattle by both the witnesses for Defendants and Complainants; the condition of the pasture on Callen Ranch at the time these cattle were bought. Mr. Dennis Callen states on page 21342, V. 54, there was grass 18 inches high, and on (21343, V. 54, there was always plenty of grass there on the place, especially in the month of June, (the time these cattle were sold to defendants), as will be seen by Dr. Gardiner's Defts. Wit., testimony, page 15923, V. 40, they were turned on the pasture where the grass was not over 1 1-2 or two inches high. (June 11th, date.)

Mr. Cook in stating the reason for limiting the feeding time of these cattle on account of their starved condition does not hold good here, as is shown by Mr. Callen's testimony they were taken from grass pasture, 18 inches high,

where doubtedly a healthy cow *could* and *did* obtain more feed than is testified to by Gardiner on a pasture of 1½ to 2 inches high, so here we see the starvation theory punctured. If any starvation occurred it must have been on Section 16, and not on Callen's ranch as is shown by witnesses for both Complainant and Defendant and uncontradicted on either side. The grass conditions were in favor of Callen's place, and the difference in the height of these two ranches are easily explained when the character of the two grasses are considered—one bunch grass, Callen's; the other, Sec. 16 (Tame meadow.)

But, unquestionably, Dr. Gardiner, Defts. Wit., was mistaken when he states grass only about 2 inches high

In stating the reason for limiting the feeding on June 11th. Vaughn, 21683, V. 55, states these cattle were turned into a meadow; a *field set apart for a meadow*, so when Dr. Gardiner stated a *pasture* it would have a tendency to mislead, and as these *are the first cattle ever on this ranch since April of 1903*, except two cows of Cook's, Dr. Gardiner's 1½ to 2 inch grass on June 11th must be a little short of facts.

Mr. Callen states on page 21343-4, V. 54.

These cattle when in his possession were fed bran and potato peelings, and would eat all the bran they could get.

Mr. Vaughn, Comp. Wit., states on page 21684, V. 55, he fed these cattle bran; some ate it and some did not. The older stock ate it, but some young stock would not. States they filled their mouths with bran and held their heads up until they swallowed it. (V. 55, 21684.)

Vaughn, 21684, V. 55, further states *there was a condi-*

tion powder mixed with this bran. States these cattle were fed hay also, but states they did not eat it.

Which clearly shows Cook's statement of being afraid to feed these cattle all they wanted to eat on account of their weak condition is not true.

If cattle were only allowed to graze two hours a day in grass 1½ to 2 inches high it would be impossible for cattle to get the required amount of forage in that length of time. Evan Jones, who also worked for Mr. Cook on Section 16, 21202, V. 54, states one of the Callen cattle died the first day. The next day we started feeding them bran.

Jones had as high as two or three tons of bran and fed it to the cows; started feeding the Callen cattle five pound lard bucket twice a day; after they got used to the bran they increased the feed to three quarts; also fed them all the hay they would eat and then turned them out. (V. 54, 21203.)

(NOTE—The testimony of Vaughn & Jones, Comp. Wits., clearly show that Cook, the company foreman swore falsely)

Was feeding these Callen cattle himself (Jones), 21216, V. 54. These Callen cattle were fed bran as long as I was there, *about two months, and were still feeding them when I left. Feeding them bran twice a day. (V 54, 21211.)*

(NOTE—Compare this with Dr. Gardiner's evidence where he swears no stock on Sec. 16, were fed anything but D. L. Valley products.)

Jones also states these cattle were fed condition powders. (V. 54, 21248.)

Louis Jones also testifies he saw these Callen cattle fed

bran by his brother, Eph Jones; also saw bran hauled to the ranch. (V. 54, 21252.)

The evident reason of these cattle not eating bran on the start was, it was a mixture of bran and some kind of medicine.

(NOTE—Oxide of iron, an antidote for arsenic—doubtless this was the condition powder.)

Cook swears only three sacks of bran fed on Section 16 since June 11th, 1905, except what he fed to his two milch cows—and most of that fed to Dobbin's hogs. (V. 46, 18250.)

Eph Jones, page 21203, V. 54, two or three ton fed.

Louis Jones, 21252-3, saw bran on the ranch; also saw it being hauled there.

Wish to call the Court's attention to the enormous gains claimed to have been made for the first few days by the cattle when Dr. Gardiner and Cook, Deft. Wits., swears they were only being allowed to pasture. (V. 46, 18251.)

Cow No. 1 gained from June 19th to June 26, or six days 74 pounds or over 12 pounds a day.

Cow No. 2, June 19 to 26, 22 pounds gain or about four pounds a day. This was claimed to be a tuberculosis cow, and this was undoubtedly one of the fattest cows in the herd, as the cow weighed 970 pounds on June 19th.

Cow No. 3. On June 19th weighed 1000; on June 26th cow weigher 1038 pounds, or a gain of 38 pounds in six days or six pounds a day. This is another tuberculosis cow and another fat one.

Cow No. 4. Gained 24 pounds in six days; weighed 780 pounds on June 19th; on June 26th weighed 804 pounds,

gained in six days 16 pounds, or a gain of about three pounds a day.

Cow No. 5. June 19th, 454 lbs.; June 26th, 470 lbs.; gained in six days 16 lbs., or a gain of about three pounds a day.

Cow No. 6 *is a bull*. June 19th, 270 pounds; June 26th 296 pounds; gained in six days 26 pounds or 4 pounds a day.

Cow No. 7. June 19th, 614 pounds; June 26th, 296 pounds, or a gain of over 13 *pounds a day*.

Cow No. 8. June 19th, 504 pounds. June 26th 590 pounds; a gain of 86 pounds in six days; over 14 *pounds a day*.

Cow No. 9. June 19th, 284 pounds; June 26th, 296 pounds; or a gain of 2 pounds a day. This cow evidently was a calf by the weight, 284 pounds.

Cow No. 11. June 19th, 526 pounds, 569 pounds, or a gain of 6 pounds a day.

Cow No. 12. June 19th, 762 pounds; June 26th, 802 pounds, or a gain of 7 pounds a day.

Cow No. 13. June 19th, 720 pounds; June 26th, 736 pounds, again of 2½ pounds a day.

(NOTE—Is it not a remarkable state of facts that these cattle gain from 2½ to as high as 14 pounds a day on a pasture such as Gardiner describes, 1½ to 2 inches high on two hours feed a day on this pasture, and feed *nothing else but this pasture*, when every expert feeder on the stand states 1½ pounds gain per day is excellent for thriving beef steers, still here is a starved tuberculosis herd of cattle (according to Dr. Gardiner) which make gains never heard of in any country or any place except on Section 16, in the Deer Lodge Valley.

These reported gains *are absurd*, and doubtless is as true as the statement of Mr. Cook that these cattle were only fed this pasturage and nothing else.)

The Court will also notice in Cook's testimony that the only *two head he reports being killed for tuberculosis* were *undoubtedly the only fat cows in the herd, as one weighed 970 pounds on June 19th, and the other 1000 pounds.* a fair weight for cows in good condition of flesh, clearly showing that the cause of the poor condition of cattle *was not tuberculosis.*

Dr. Doremus, Defts. Wit., found arsenic in all of the analysis of these animals; tissue, milk, urine, contents of stomach showing *arsenic* the trouble with these cattle.

Cook states did not feed Staton's cattle all they wanted to eat, *but* states on the same page that they were fed more hay than they did eat, but states the hay to be inferior that was fed to them. (V. 46, 18259.)

(NOTE—Does it look reasonable to the Court that the Defendants would put in corrals in *October*, and pen up starved *cattle* as is claimed by Defendants these cattle were fed hay cattle would not eat—when they had a meadow pasture of many hundreds of acres on which these cattle could have been turned and allowed to procure their own feed?

Why was it necessary at all to put these cattle in corrals in *October*, if the conditions of the pastures of the Deer Lodge Valley were not affected by the smelter fumes?

No place in Montana are stock cattle compelled to be kept this way except in the Deer Lodg Valley. The actions of the defendants themselves show they knew it was necessary to give these cattle extra care in order to keep them alive, and every person knows that the pastures of

Montana in October are better feed, and cattle will thrive better on them than on any inferior hay as the defendants would have the Court believe were fed these cattle. *But* the defendants witness, Cook, goes too far when he tries to convince the Court that these cattle were hungry and did not get enough to eat.

Gardiner, Defts. Wit., on page 15935, V. 40, makes the following and *unquestionably false* statement.

“Hay was thrown out of a mow to those animals, (Stanton’s cattle) and two men did not get any hay on the ground for half hour. THE ANIMALS GOT RIGHT UNDER THE MOW AND TOOK ALL THEY COULD THROW OUT THERE; WAS NOT ANY ON THE GROUND FOR HALF AN HOUR.

Miller, Defendants’ Witness, swears these cattle at four loads of hay the first night. (V. 49, 19430.)

(NOTE—*Four loads, about four tons or 8000 pounds about 90 pounds on an average to the animal, excluding sucking calves.*)

Still Gardiner and Cook stated they did not feed them all the hay they wanted.

Miller, Gardiner and Cook, Defts. Wits., doubtless got their wires crossed here, according to Gardiner’s statement these cattle were so voracious they would not allow any hay to reach the ground, practically caught it in the *air*, while Cook states they were fed so much inferior hay they had to pick it over, and then could not get enough to eat. *But why necessary to feed hay to stock cattle in October when there had been no stock pastured on the meadows of Sec. 16, that fall? Why were they not turned out? Only one answer, too much poison on the pastures.*

Cook states they will expect a good calf crop this year. (Date of testifying, November 17, 1906.) (V. 46, 18264.)

(NOTE—The Court will bear in mind these cattle were bought October 19th, 1905. The Defendants have had these cattle in their possession about 13 months, and they still *expect* a good calf crop.)

Cook on page 18151, V. 46, shows ten calves born on Section 16 from the Statton herd of 33 cows up to May 7th, 1906. On the weighing on September 19th, 1906, he reports no weight of calves in this bunch; none are listed. Clearly showing there was no calves born between May 7th and September 19th, from this herd of cattle, which on May 7th, (18261, V. 46), consisted of 33 cows and 18 head of two year old heifers. (50% of the two year olds should breed two years) giving a breeding herd of 42 cows, 80% normal to breed as shown by Wenger, Defendant's Witness, still only 10 calves reported by Cook, showing an increase of less than 25% for 11 months, and yet the defendants *expect* on November 19th a large per cent of calves for 1906.

Cook, son-in-law of Jesse Miller, and hired by him to take charge of Section 16 and 17. (V. 46, 18297.)

Cook is unable to give the acres of hay on Section 16, the amount of hay cut, or any of the production of the ranch which would furnish any information to the Court as to whether the crops were increasing or decreasing on Section 16, Defendants' Experimental Farm. (V. 46, 18300.)

(NOTE—The Defendants' Counsel has severely criticized the Plaintiff in this case for failure to put on *more of the Farmers of the Valley, to show the condition of their crops*, while we find here on the Defend-

ants' own experimental farm *their manager*, cannot give the results of the production. Is it not more reasonable to assume that this man *knew* all about it. His testimony shows he knows everything about the stock, weight, etc. He has kept a minute account of everything except the production of the ranch and this the witness *conveniently* knows nothing about.)

If their production of hay and grain on this ranch had been a success there is no question but what they would have produced the figures. (V. 46, 18300.)

Oat crop of 75 or 80 acres cut or hay. August 10th, 11th, and 12th, 1905, immediately prior to the Court visit, and as the defendants were aware in advance the time the Court was to visit the valley this the only crop of grain planted near the smelter was undoubtedly cut to prevent the Court seeing the condition of the grain crop in that vicinity, and as it was on the farm of the Defendants, here they could not cry, "*Neglect, Poor Farming, dandelions, poor seed, bugs, etc.*" (V. 46, 18302.)

Cook states on 18305, V. 46, he kept on track of the amount of oat hay cut from 80 acres on Section 16.

But admits that there was not 20 tons in 1905. *Practically nothing in 1906. Did not cut this land although the previous year, or 1905 it was sowed to timothy and clover.*

There was not enough to cut; would not pay to cut it. (V. 46, 18306.)

Cook's testimony shows he had 10 to 12 men for six weeks preparing this land for crop; also two teams part of the time, one all of the time, so for the purpose of demonstrating the cost to Defendants in preparing this land for crop we use one team, full time, of six weeks, and the other for three weeks. (V. 46, 18307.)

12 men, 42 days at \$3.00 a day equals	\$1,512.00
Team hire 73 days at \$3.00 a day equals	219.00
	<hr/>
Total cost of preparation of 80 acres of land for crops	\$1,731.00

(NOTE—This is not counting time for the witness, Alva Cook, who states that e is foreman or has charge of this ranching— or anything for his team.)

We get \$1,731.00 *cost to defendants on this 80 acres before the crop is planted*, cost of seeding, irrigation, cutting, and stacking crop to be added. We take \$5.00 an acre for grain and grass seed equals \$400.00; irrigation and cutting crop \$1.50 an acre equals \$120.00; stacking 20 tons at \$1.50 a ton equals \$30.00.

\$400.00 plus \$120.00 plus \$30.00 equals \$550.00 care of crop and seed on this 80 acres \$550.00 plus \$1,731.00 equals \$2,281.00 *expended on this 80 acres in 1905 or \$28.50 for each acre.*

What did they receive, allowing them 20 tons of oat hay, which even Cook states *there was not that much*, 20 tons at \$8.00 a ton in the stack equals \$160.00. \$2,281.00 minus \$160.00 equals \$2,121.00 *net loss on 80 acres in one year.* The oat hay they got from this 80 acres cost them *over \$100.00 a ton in the stack.* Defendants' Counsel may claim this is not fair as it was seeded to grass as well as grain, but it is fair for the reason the grass seed came up good and was destroyed in 1905 and 1906.

Cook shows they again seeded it to grass. (V. 46, 18302.)

Cook states that about 250 tons of hay has been sold

from this ranch in 1904 and 1905. This ranch consists of $1\frac{3}{4}$ sections of land. (V. 46, 18304.)

(NOTE—The Court can doubtless see why the defendants do not care to show their profitable farming, and the Court will see by Cook's testimony, page 18303-4, V. 46, most of this so-called sold hay was sold to the *defendants themselves*. There was not a man produced in the case who testified to ever buying any of the produce from this ranch, and the defendants kept no stock cattle or horses on that ranch prior to 1905 except Cook's two cows and work horses, the production of this ranch must have been very small. As soon as they began to get any stock to *spcak of they were compelled to buy hay*. W. J. Evans testifies to hauling hay to Cook in 1905 and 1906; fed all the hay they produced on their ranches in 1905 to Staton's cattle, swamp ranches and all, so we see the entire sale of hay as shown in this record by the defendants to be about 250 tons and they have 8000 acres of land situated easterly from Anaconda, in the main portion of the Deer Lodge Valley, and on this immense tract of land in 1905 and 1906 they only supported about 200 head of stock in 1906; in 1905 about 100 head. The total gross receipt from this ranch for produce and stock raised on it is as follows:)

10 calves born on Sec. 16 sold to Montgomery.

250 tons of hay, principally sold to Defendants.

This is all the record shows they have sold; they actually produced since 1903 or for a period of four years. It is true they sold some steers, 12 head, also some 60 sheep, but these were not produced there, and the defndants do not claim to have been feeding thm to try and make a profit, and unquestionably the gains made by these animals did not cover the expense.

Mr. Kelley, promised to show that their farming opera-

tions in the Valley was one of the best paying assets of the Defendants' Companies; also to show all the books in connection with their farming operations in the Valley. V. 34, 13173. *But* not a thing was shown, and unquestionably the fact as to it being one of the most profitable enterprises as stated by Mr. Kalley, Defendants Counsel, 13173, V. 34, is *not true*, for if true, unquestionably the defense would have produced the same, but we infer that when Mr. Kelley saw the books from the farms his memory must have suddenly failed on *this point* in the case, to-wit: Profitable farming and stock raising in the Deer Lodge Valley.

Jno. Gillie, Defendants' Witness, and *Superintendent of the Amalgamated Mines* also promised to furnish the same when on the witness stand, page 13173, V. 34. Mr. Gillie's memory also must have failed on this point.

Cook states no extra preparation of the ground or crop on Company's ranch. (V. 46, 18307.)

(NOTE—Cost as can be seen \$28.50 an acre to prepare for a crop *they did not produce*.)

Will submit it to the Court, if the above statement is true.

The first stock the defendants ever had on Section 16 was the Callen cattle in June of 1905. (V. 46, 18308.)

(NOTE—Clearly showing the Defendants were not conducting their property as a farmer does, but showing only ranching for the purpose of manufacturing testimony to be used in this case.)

Can't tell the cost of farming Sections 16 and 17. (V. 46, 18310.)

States cattle or Idaho steers were pastured in the hay meadow on Section 16 all summer—the same meadow from which Cook cut the hay in 1906. (V. 46, 18311.)

(NOTE—*Still Defendants' Attorneys state to the Court stock on Section 16 only had average farm conditions.*)

Cook admits the total gross sales from the Sec. 16 ranch for three years, 1904, 1905 and 1906 to be from the sale of about 250 tons of hay, and from 17 calves, 10 of which Staton testifies were thrown in with his cows when he sold them. (V. 46, 18312.)

Cook swears positively the Callen cattle were fed nothing while they were on pasture in the summer of 1905.

(NOTE—His evidence impeached by E. Jones, L. Jones, and Mr. Vaughn, Comp. Wits.)

Cook states Dr. Gardiner, Deft. Wit., was not on the ranch at all when the Staton cattle were fed, clearly showing Dr. Gardiner a false and biased witness. (V. 46, 18316.)

Cook swears to the amount of hay fed the Staton cattle the first night as about 1800 pounds. *Disputing Jesse Miller, Deft. Wit., who states they were fed four loads that night. (V. 46, 18316-17.)*

(NOTE—Cook's testimony here shows both Miller and Gardiner, Defts. Wit., were swearing to things they knew nothing about, but as both of these men, an especially Gardiner, were drawing \$700.00 a month and expenses he doubtless was trying to earn his salary.)

Cook admits there had only been about 15 head of cattle and horses allowed to pasture on the ranch up to the

time the Staton cattle were brought there, in October of 1905. (V. 46, 18317.)

(NOTE.—Clearly showing there must have been plenty of grass available for cattle on October 19, 1905 and it was not on account of lack of pasturage these Staton cattle were fed hay.)

Cook swears only three sacks of bran was fed to the stock on Section 16, which was fed to the following stock: 1½ sacks to the Staton bulls. (V. 46, 18320.)

The Dobbin's hogs bought at Staton sale, 2 feeds, or about two sacks, also some of this three sacks was used in feeding the poison. (V. 46, 18321.)

Only about one-half a sack used in trying to get the Callen cattle to eat it. (V. 46, 18322.)

(NOTE.—Mr. Cook's testimony, as quoted above, is undoubtedly false, as Mr. E. Jones, Louis Jones and Mr. Vaughn, complainants' witnesses, all testify to the Callen stock being fed bran; also to either hauling or seeing it hauled to the ranch—bran in large quantities.

Vaughn states (page 21691, Vol. 55, he helped feed the Callen cattle bran and condition powders, and they ate it; that when they put it in their mouths they swallowed it. (Cook swears they would not.)

Also helped Cook feed these cattle hay (page 21688, Vol. 55). On page 21203, Vol. 54, Jones states as high as two tons of bran on the ranch at a time.

Louis Jones (page 21250, Vol. 54) swears to seeing the Callen cattle fed bran; also saw some bran hauled to the ranch by Donnelly; also saw bran on the ranch, a number of sacks.

Unquestionably Cook is swearing falsely to the amount of bran fed on this ranch—three sacks. What became of the remainder hauled there at different times by Vaughn and Donnelly? Jones swears to see-

ing a ton or so loaded at McCallum's store and hauled to Section 16. Vaughn swears to 10 sacks he hauled from McCallum's to Section 16, still Cook only fed three sacks to everything on the ranch, hogs, bulls and experimentally poisoned stock.

The testimony of Vaughn and Jones could have been easily disputed by the books of the firm, McCallum & Cloutier; if false, as these witnesses tell, where the bran was bought, and at about what time, and there is no question but what the testimony of Vaughn and the Jones brothers is true.

Even Jones, on page 21203, Vol. 54, states that *the real calves sold to Montgomery were also fed bran.*)

Cook states eight of the twenty Valiton steers not fit for beef. (V. 46, 18323.)

(NOTE.—This is the experimental steers fed on Sec. 16 for beef. The same steers George Moore, defendants' expert beef man, testifies good beef.

These were the experimental steers fed for beef on Sec. 16 under Gardiner's directions, and notwithstanding the enormous gains, as testified to by Dr. Gardiner, only 12 of the 20 were fit to kill. Ten head sold for \$37.50 and two for \$20.50 each, showing the ones sold for beef were inferior, and these 12 steers were bought by a tenant of defendants, Mr. Montgomery.)

Cook swears the grain and grass seed came up good (this is the 80-acre oat field), and before they could get their ditch from the creek it burned up for want of water. States their ditch was not completed until July 3rd. (V. 46, 18328.)

(NOTE.—Mr. Cook is contradicted on every statement made above. Mr. Evan Jones, on page 21204, Vol. 54, states he irrigated this field in 1905 and had plenty of water on page 21204, Vol. 54. Jones states field sown to oats, timothy and clover; they got no

stand. It came up about one-half an inch and it all died off. The smoke came down there pretty strong when it was growing; it was about one-half an inch high. They only got about 8 tons of straw from this eighty acres. It did not get high enough to cut with a reaper or binder (page 21205, Vol. 54). In 1906 they sowed it again to timothy and clover; they got a little stand; it don't amount to much; was not cut in 1906.

Jones swears he began irrigating this field in June; that he used *two ditches*; one of them *an old ditch*, and he also used the new ditch in June; the ditch that Cook swears was not completed until July 3rd.

The Court will see in Mr. Cook's testimony where he is trying to account for the burning up of the crop for lack of water. He carefully avoids the mention of the fact of *two ditches* leading on to this land; *one an old one*, as testified to by Mr. Jones, and the strange thing about the old ditch, it never was mentioned until Mr. Kelley, defendants' counsel, asked about it, and he only asked after Mr. Jones swore to irrigating this land in June, which was prior to the time Mr. Cook swore to any ditch on the land, and only strengthened the complainants' witness when he brought out the fact of the old ditch being on this land. The testimony of Mr. Jones and the questions of Mr. Kelley, showing the defendants already had a ditch on the land prior to the digging of another, clearly shows Mr. Cook testifying falsely about this grain burning up on account of their ditch not being completed until July 3rd, so that it could not be irrigated.

In fact, Jones shows the new ditch was being irrigated from in June, as well as using water from the old one on this same land.

Prof. Jones, complainants' witness, page 5914, Vol. 15, and Prof. Elrod's, complainants' witness, page 6578, Vol. 17, testimony shows this field was injured by the smoke and *did not suffer for lack of moisture*.

Complainant Vaughn, on page 21678,, Vol. 55, offered further proof as to the proper irrigation of this field, but it was not allowed to be introduced by the Master.)

Cook states the defendants have recently brought 200 head of stock from Deer Lodge and 27 head from above Anaconda to the ranch, Section 16. *Admits not enough hay on Section 16 ranch to winter these stock, and states they figure it will take all the hay on all the Company's ranches to winter these stock.* (V. 46, 18329.)

(NOTE.—*Or all the hay cut on all the 8000 acres to feed less than 350 stock. We have added the Staton cattle to this 227 head.*

A most miserable showing for defendants' stock and farming operations.)

Cook states these cattle (Callen cattle) were lousy, which also Mr. Gardiner, defendants' witness, states. (V. 46, 18343.)

(NOTE.—Mr. Vaughn, complainants' witness, states on page 21682, Vol. 55, the Callen cattle were pastured in the hay meadow (21691, Vol. 55). Vaughn states there *was only one lousy cow* in the bunch, and he looked at them all. States defendants sprayed the cattle. They curry-combed and brushed some of them to get the old hair off of them. They had not shed; fed them bran and condition powders.

Vol. 55, page 21693, states these cattle were put in box stalls and fed.

Vol. 55, page 21696, *lice only on one of these cattle.*

Vol. 55, page 21699, Vaughn states these cattle (Callen cattle), in August, 1905, were not healthy, and did not look good. (About 60 days from the time cattle were brought to Section 16.)

Vol. 55, 21704, *Vaughn states the cattle on Section 16 were taken better care of than Kohrs or Bielenberg's thoroughbred cattle, which were worth from fifty to*

seventy-five dollars apiece the minute the calf was born, and the Callen cattle were taken better care of than these.

Vol. 55, page 21707, *Vaughn states only one lousy cow, but they put powder on all of them; also sprayed all of them.*

These cattle had not shed their last year's hair. Cattle usually shed every spring, but these had not. Maybe one or two had.

Vol. 55, page 21709, some of these cattle were very weak when they came there; could scarcely walk. *Vaughn states he examined all of these cattle for lice; spread the hair on them, on all of them (V. 55, page 21710), and did this in the presence of Mr. Cook. He had them in box stalls; only one was lousy; did not see any lice on any of the rest, and examined them all over.*

Vol. 54, page 21343, *D. Callen, complainants' witness, states these cattle were not lousy.*

This statement of Mr. Vaugh's show *how things were done on Section 16. They find one cow with lice, and immediately spray and powder the whole bunch, whether they need it or not, and then come into Court and testify to finding lice, and the drastic measures they use to get rid of lice on cattle that did not have them.*

Why should these cattle be caught and put singly in box stalls and fed condition powders and bran in June if they were simply starved? Is not good, green grass better feed for poor, thin cattle than any other feed on earth? It most certainly is. The evidence of Vaugh shows these cattle were sick, and that was the cause of their condition of flesh, and not lice and starvation.

Vaughn shows he was telling the truth in this case; shows he did *not know the attorneys in the case.* Had not been on speaking terms with Mr. Quinlan, also had *not talked to any of the interested persons in the case,* and did not know he was to be called in the case until

served with a subpoena. *Has no interest in the case, one way or the other.*

Now, let us look at Cook's interest; Foreman on the ranch of defendants, son-in-law of Jesse Miller, defendants' witness, under whose direction he works; is interested in Mr. Miller holding his job, for doubtless if Miller lost his job Cook would go to.

Cook owns no land in the Valley, and the only thing he has there is his job, and we believe Mr. Cook was trying to protect it, even at the expense of the truth.)

PATRICK C. McELLIOTT, Deft.'s Wit.:

Direct Examination.

Resides in Great Falls. Business, a mail carrier. Worked for the defendants during the year 1905. He attended three experimental horses for the defendants. (V. 50, 19588.)

This experiment was carried on at the Washoe Smelter. Worked under the direction of Dr. Gardiner, defendants' witness. (V. 50, 19599.)

In the morning we would take the bay mare, No. 1, *out of the stall*, then turn on the fan for about an hour, then open the doors. During the time this smoke was being pumped into the stall the mare was taken out. (V. 50, 19599.)

States that there was a partition between where the fan was in this stall No. 1 and where the horse was kept; also where the hay was kept. This partition was within about three and one-half feet from the top. (V. 50, 19601.)

Horse No. 2—the next horse—the food and water was placed in the stall, and we took a fork, stirred up the dust around there and shut the door. THIS WAS JUST THE

DUST ON THE GROUND. (V. 50, 19602.)

(NOTE.—No smoke ever turned into this stall No. 2. Horse No. 3 was used to run up expenses.)

This pipe which was inserted into the flue was probably a quarter of a mile from the big stack, north of the concentrator. (V. 50, 19604.)

(NOTE.—Unquestionably the arsenic in the smoke would be precipitated in this pipe and *none* reach the stall where the horse No. 1 was kept.)

This pipe was about three and one-half inches in diameter. (V. 50, 19605.)

There was a slide cut in this pipe *about five feet from where it ended in the stall; if this slide was open no smoke could enter the stall with the fan running; it would just draw the atmosphere in. I could not say whether anything was pumped into this pipe except smoke; when I turned the fan on I went outside.* (V. 50, 19607.)

After the smoke had gone out of the stable we put the horse back in and shut the door. After the first experiment was completed they changed it somewhat. (V. 50, 19608.)

They ran the horse in there, but I couldn't see any smoke in the stall, because the slide on the outside, that I referred to before, was open. The atmosphere was just pumped in there, that was all. We only tried this smoke experiment with one horse. The other horse we took out of the stall in the morning, groomed her off and gave her hay and water, hay in one corner and water in the other, and stirred up the floor of the stable; that is, the ground floor; raised the dust and closed the door; let it settle for

probably five minutes, and then opened the door and put in the horse; there was no smoke in this stall at any time. (V. 50, 19609.)

The only thing that was put into this stall besides hay and water was when the barn floor would get a little wet we would go outside and get some of the dust that is around where I used to exercise them, and throw it in there and raise the dust. *This was just dust from the ground outside. (V. 50, 19610.)*

The way I made sores with fox-tail and spear grass was as follows: *Dr. Gardiner told me to take these fox-tails and run them down into the little tear duct in the horses' nose until we got one caught and it would raise a fester; and also to run spear grass down there. (V. 50, 19613.)*

After we got a sore nose started in this duct we stuck some more around the outside. *We used to put these in a couple of times a day. We forced these into the sores with our finger and thumb; we kept sticking these fox-tails in for about two weeks. (V. 50, 19614.)*

After we quit putting the fox-tail in with our fingers the nose began to heal. This sore nose business was carried on under the first experiment. (V. 50, 19615.)

There was no fox-tail in these horses' noses, or evidence of a sore, when I started sticking fox-tail into them.

H. A. CONYNE, Deft.'s Wit.:

Cross-Examination.

Have handled less hay from the Valley since 1902. *We have had a good many complaints from our customers. Our customers would tell us that they would not want the Val-*

ley hay, and asked for hay from outside points. (V. 30, 11830.)

They objected to it on account of the smoke, or the talk about the smoke. (V. 30, 11831.)

Timothy hay at this time sells for \$20 a ton retail. (V. 30, 11856.)

(NOTE.—Still best price for Valley hay from \$6 to \$12 a ton.)

The scarcity of the hay is caused by buyers from the *Pacific Coast*, who have bought *all of the hay in the Bitter Root Valley and southeast of Bozeman*. Gary Bros. of Bozeman notified us they were shipping to the *Pacific Coast*. (V. 30, 11857.)

(NOTE.—This clearly shows the farmers of Deer Lodge Valley have markets outside of Anaconda for their hay.)

The vegetables that we purchased from the Valley are principally grown under ground, such as potatoes, beets and carrots. (V. 30, 11890.)

Staton used to sell us large quantities of cabbage, but has not offered much for the last two or three years. (V. 30, 11892.)

Only bought \$4,022 worth of oats from the Valley since the smoke. (V. 30, 11893.)

Have bought less than \$1,000 worth of wheat a year since 1902 from the Valley.

Bought only \$6,238.95 worth of hay from the Valley in four years. (V. 30, 11894.)

Walter Staton's ranch alone can produce more hay than we have bought from the entire Valley. Have paid \$4,810

for vegetables, green stuff, cabbage, etc., from the Valley in the past four years. Have paid out *more for potatoes* than for hay, oats, wheat, etc., combined. (V. 30, 18894.)

(NOTE.—A crop potatoes resistant to smelter fume.)

In 1903, the year that the smelter was closed, was the only year we exported potatoes from the Valley. (V. 30, 11896.)

Refused to buy hay of Staton. (V. 30, 11905.)

Lindsey and Mitchell bought *outside hay of us to feed*. Shippers demand *outside hay to feed to beef cattle they are shipping*. We sell *Montgomery outside hay to feed to the cattle he ships*. (V. 30, 11906.)

(NOTE.—Mr. Montgomery owns a slaughtering plant near Anaconda, and ships large numbers of cattle to Eastern and Western markets, besides slaughtering for Anaconda. Here we see a man who, unquestionably, knows the conditions that exist in the Deer Lodge Valley, and refuses to feed, even for a day or two, cattle that are going to be shipped on this poisoned hay.

Mr. Conyne's testimony shows on page 11893, Vol. 30, that his purchases from the Deer Lodge Valley of every class of products does not average \$40 a year to the farmers situated in the Smoke Zone.)

Have refused hay of John Quinlan. (V. 30, 11910.)

Have bought no hay of Norton since the 1903 crop. Has offered us hay, but refused it. (V. 30, 11915.)

The *cheapest* we have bought outside hay in the last four years, \$10 to \$11 for wild hay, \$12.50 to \$13.50 for timothy. The last we bought from Bozeman cost us \$17.80 f. o. b. Anaconda. (V. 30, 11935.)

Admits Scott Peck's ranch, or Staton's ranch, cuts as

much hay (in value) as all the stuff we buy from the entire Valley. (V. 30, 11936.)

Have shipped in about 35 cars in 1906, or about 490 tons; about the same in 1905. (V. 30, 11938.)

Have handled more bran since the Washoe Smelter was built; there is more milk men. (V. 30, 11940.)

Admits telling Staton in Anaconda, in the fall of 1903, that he would not give \$2 a ton for Valley hay. (V. 30, 11952.)

I have stated that if we handled Valley hay it would injure our trade. (V. 31, 11972.)

Admits Staton offered him his hay at their own price. He did not take it because he did not have any market for it. (V. 31, 11973.)

Sell to nearly all the stores in town—produce and merchandise. (V. 31, 11979.)

(NOTE.—Notwithstanding this fact that there was no market for Staton's hay, Mr. Conyne's testimony shows that he shipped hundreds of tons of hay into Anaconda from outside points at this time.

Record shows (for the convenience of the Court) that McCallum & Cloutier bought 538 tons of hay and 40 tons of straw, approximately, from the Valley from 1902 to 1906. Boiled down, for the convenience of the Court, the testimony of Conyne shows that they bought 193 tons of outside hay in 1901; states they bought 490 tons of outside hay in 1905; and the testimony shows that they bought 187 tons of outside hay in the two and a half months given in 1906, or more outside hay in two and one-half months after smoke damage than they did in a year before the smoke damage. The following is taken from the record:

The record shows that the returns of 13 members of the Farmers' Association who have reports of each year's grain crop (and they are the only ones who

have taken account for the four years) show the following result :

In 1903	21178 bushels.
In 1906	10389 bushels.

Showing a decrease of 9,211 bushels in the four years. A decrease of 50 per cent.

Note a complete list of all purchases of McCallum & Cloutier Mercantile Co. as given by Mr. Conyne is in table form. In answer to defendants' Brief will show a steady decrease in the purchase of Valley produce, excepting potatoes.)

FRANK HENAULT, Deft.'s Wit. :

Direct Examination.

Witness states he is employed by the A. C. M. Co. and leases their ranch east of the City of Anaconda, known as the old French Crossing Ranch.

The alfalfa I sowed last year, there is not much of it left there now in that new place. (V. 20, 7733.)

There is six hundred acres on the ranch on which I live. The A. C. M. Co. owns it. There is close to 40 acres of hay land; the rest of the ranch is hills and pasture. There are 300 acres of pasture. I raised 35 tons of hay in 1903; some alfalfa, some timothy and clover, and some wild hay. There was some less timothy in 1904 than in 1903. There was 16 head of cattle on this ranch in 1903. V. 20, 7748.)

(NOTE.—Here is 600 acres of land used for 16 head of cattle and a few horses.)

For the first few years that I had this ranch I paid \$10 a year for it.. (V. 20, 7753.)

After this smoke trouble began in the Valley the Company raised the rent to \$125 a year. (V. 20, 7756.)

(NOTE.—This was doubtless done so the witness could testify in the case and try to establish an increased value to land since the smoke.)

Cannot remember what he paid in rent two years ago for this ranch. (V. 20, 7757.)

(NOTE.—This is a very queer thing. He cannot remember what he was paying *two years ago for a farm in rent.*)

This year, 1906, I am paying \$150 a year. (V. 20, 7757.)

I am under salary from the Company at the present time. *My being under salary (from the Defendants' Company.) I probably pay more rent for the Company's 600 acres than if I was not. I don't think that I could get it any cheaper if I was not under salary, but if I was not I would not be there.* (V. 20, 7760.)

(NOTE.—The above shows that this man Henault is not renting this land to make a profit, but to hold his job.)

Took one and one-half tons of hay to the head in the winter of 1903. (V. 20, 7766.)

The rental of the Hensley ranch for \$150 is not a reasonable price; *too cheap.* (V. 20, 7771.)

(NOTE.—This witness has lived in the Valley twenty years and over, and don't know the condition of any of the other ranches within three or four miles of his own. (See pages 7769 and 7770, Vol. 20.)

Henault's hay cost him \$6 a ton standing on the ground. (V. 20, 7780.)

(NOTE.—That is including care to grow and rent, cut about 35 tons, and pay \$150 rent. The remainder of cost for irrigation and care. It cost \$2.50 a ton to cut it and stack it, so his hay cost him about \$8 or

\$8.50 a ton on the ranch, so any one can see that this ranch is valueless. It also only supports about 30 head of stock, and they take all the hay produce on the ranch, and they have to buy hay from other ranches as well; also note that these stock are not kept exclusively on this ranch, but run on the range as well.)

I have one of the horses on my ranch that had a sore nose in 1902 that did not shed until this spring. (V. 20, 7793.)

(NOTE.—Spring of 1906.)

I feed more hay than I used to. I have only examined the stock on one ranch. *My own.* (V. 20, 7796.)

(NOTE.—This shows that this man knows nothing of the conditions existing in the Valley, outside of his own place, and his testimony shows that he could not make a living on this ranch he is now on. His hay cost him about \$8 per ton; feeds it all to the stock. His only income would be the increase from the cows and mares. Now, let us see what his increase is (page 7765, Vol. 20): Had 16 head of cattle all told, say all cows, and give him a 90 per cent. increase in calves, or 14 calves. Value these calves at \$10. We have for *increase in cattle* \$140. Now, take the greatest number of colts he has raised in any year, five head, at \$40 a head, or \$200 on his horses, and we have a *total gross income from the ranch of \$340*. Fed 40 tons of hay at cost of \$8 per ton (this cost for the hay includes rent of ranch, cutting and stacking and care), and we have a cost of \$320 for actual feed, leaving a profit of \$20 a year. If we include the cost of caring for this stock allow anything for interest in the money invested, or allow anything for natural deaths, *Mr. Henault is working for nothing and boarding himself*. This witness, by his testimony above, has substantiated the evidence of the complainants' witnesses. *Here is 600 acres of land which does not produce enough feed to feed about 30 head of stock, has to buy hay from others,* and in this summary of the increase of stock

we have allowed him *the full normal increase, 90 per cent.*, and further note, this man *says he would not be there if he was not working for the Company.*)

Q. Do you feed about the same amount of hay you did?

A. I feed a little more hay. (V. 20, 7797.)

Henault's brother quit his ranch (Frank Henault's) on Lost Creek and moved to town *after the big stack was built. He said there was no money in ranching.* (V. 20, 7797.)

Sold his stock, as smoked stock (the cattle). (V. 20, 7798.)

He never examined the vegetation on his Lost Creek Ranch, while growing, any year. Never looked for spots on his grain or hay. Never looked for spots on his grain or hay. Never noticed any in 1902. (V. 20, 7799.)

(NOTE.—Clearly this witness' testimony is valueless as to the conditions of the vegetation, as the above clearly shows. Could not even see *anything* in 1902, when the Company admitted damage and paid for it. *Paid this witness that year as well as others.*)

In 1904, the last year his brother was on his Lost Creek ranch, his *hay crop was less than formerly.* Can't tell how much hay his ranch used to cut prior to 1902.

much hay his ranch used to cut prior to 1902. (V. 20, 7801.)

I keep one milch cow. *Don't make his own butter; raises no vegetables for his own use; buys in Anaconda.* (V. 20, 7811.)

(NOTE.—Mr. Henault can give the production of his Lost Creek ranch in 1904, but can't give any information in the last two years. *Has no memory.* Messrs. Blaine and Orm, defendants' witnesses, were on the stand in this case. They had the Henault ranch in

1905. They were asked about the quality of the hay, but did not go into the yield.

Pat Sweeney, defendants' witness, page 8316, Vol. 21, speaking of the Bernard place and French Crossing ranches, the smoke *not bad on the east side of the Valley*, and states *the times it is bad there it comes from Butte City, over twenty miles away*, and states these ranches are as clear from *Anaconda smoke* as any ranches he knows of, and doubtless Mr. Henault knows the same facts, as he rents his ranch in the smoke belt on Lost Creek; keeps no stock there and keeps all of his stock on the east side.

Mr. Sweeney, defendants' witness, confirms the witnesses for complainant, that the smoke does little or no injury in the vicinity of these ranches.)

Admits the crops on his Lost Creek ranch are getting less, but the testimony of Blain & Orm, defendants' witnesses, show only 45 tons cut on this ranch in 1905, while on page 7803, Vol. 20, Henault shows there was over 80 tons of timothy and red top (while the crop cut by Blaine & Orm was principally alfalfa), cut in 1903, a decrease of almost one-half in the hay on the ranch of one of the Star Witnesses for defendants. (V. 20, 7801.)

Henault shows he has paid no attention whatever to his Lost Creek ranch; knows nothing about the condition of the vegetation; the yield, in fact, *complete ignorance—lack of memory*. (V. 20, 7799-7805.)

THOMAS PARKER, Deft.'s Wit.:

Direct Examination.

He lives about five miles west of Anaconda, on Warm Springs Creek. Has been ranching there and on Mill Creek about twenty-two years. Has been acquainted with ranch that he now lives on for about twenty years. (V. 21, 8153.)

States he has about 200 acres of land and cuts about 60 acres of hay; this was in 1991, and had about 90 or 95 tons of hay, timothy and clover. (V. 21, 8154.)

Thinks he cut about a ton and a half to the acre; thinks that about two tons to the acre would be the average for that kind of hay, timothy and clover. (V. 21, 8155.)

Sold his hay in Anaconda that year for \$15 a ton, loose hay. (V. 21, 8156.)

States he had in about 18 acres of oats, and cut it for oat hay. (V. 21, 8157.)

Had in a few potatoes and some cabbage. (V. 21, 8158.)

Owens about 14 head of horses and 5 head of cows; they range on the north side of Warm Springs Creek, and did fairly well. (V. 21, 8159.)

(NOTE.—Mr. Beninger and other Company witnesses claim when the smoke came up Warm Springs Creek, west of Anaconda, it usually goes *along the south side over the foothills.*)

Q. Now, after the oat hay was cut, did a second growth come up?

A. Yes, sir.

Q. *Did you notice anything the matter with that at any time?*

A. *Yes, the smoke came one day and I noticed the next day that the leaves that were on the oats were white.* (V. 21, 8163.)

Q. *You noticed the leaves on the oats were white?*

A. Yes, sir.

Q. *And you noticed the smoke from Anaconda the previous day?*

A. *I had noticed the smoke, yes.*

Cross-Examination.

The time he noticed the smoke on his second crop of oats was in August, 1905. (V. 21, 8169.)

Q. That is the only time that you noticed it last year?

A. That is the only time that I noticed it affecting the hay or oats.

Q. That is the only time you noticed it settling down on the oats there, was it?

A. Well, I had noticed it these times settling down on the crop, but it appears to be times when the grass was dry and I can't believe the smoke will effect it when it is dry like it will when it is wet. The time it affected these oats it was wet; it had rained and I noticed *the leaves were all burnt white*, just like you rub chalk over them.

Q. Do you have very much smoke during the crop season; the growing season of the crop?

A. No, we don't have no smoke then.

Q. *When this smoke comes up there, which way does it go?*

A. *It generally goes to the south of me, and along the hills, and comes right over my ranch; it misses my ranch when it does come up and goes to the south.*

(NOTE.—It is not very often that he has strong smoke, or much smoke settle on his place, and that is true ever since he has lived up there.)

States that he has very little smoke during the summer season. States that he cannot see all over the Valley from his place; can see partly over the Valley, but can see the stack and see which way it was going; it goes right down the Valley mostly; the prevailing winds take it that way.

(NOTE.—Again one of the defendants' witnesses is disputed, and that is Mr. Strange, who, in filing his report, tried to show the Court that the prevailing winds was not down the Valley.)

Q. And would you ever notice the smoke conditions, say at the Levengood ranch? Were they any different from your place since you have been up there?

A. The Levengood ranch is a different kind from mine, and I have never been on the ranch since I have been up there. Not to go right on it, but from the road it looks dark at times, and at other times it looks green. I don't know what the cause of it is, whether it is not properly cared for or not.

Q. Have you noticed smoke on the Levengood place when you did not see it on your place?

A. Yes, sir. **THEY HAVE SMOKE THERE FIFTY DAYS WHEN IT IS NOT ON MY PLACE ONE.**

Claims Mr. Levengood's place is only about a mile from his place. (V. 21, 8171.)

(NOTE.—Levengood's place is east of his place, towards the smelter.

That Prof. Elrod, complainants' witness, also pointed out brown leaves on the clover, and thought they were smoked.

Here, again, one of their witnesses has exploded the fact that light frost (even frost that would injure the blossoms on apple trees and spot the clover, would do any harm to fruit or vegetation, even in the month of June), as the witness claims that he had a fair average crop of apples and a good yield of timothy and clover, and the Court will notice by the records that nearly every witness for the defendants, when cornered up, as to different injuries, such as spotting of fruit grass and grain, have always cloaked themselves with the word "frost," and the word without a doubt has

been impregnated into these records by the defendants' witnesses and counsel at least ten thousand times as a defense to the smoke injury.)

Witness states that he was not a member of the Farmers' Association; that he did not have an occasion to be a member. States that one Sunday morning before he testified Jesse Miller and Dave Reese came up with a two-seated rig and took Mr. Benninger and himself down to the Cook ranch (meaning the Company's ranch on Section 16).

(NOTE.—Here Mr. Parker disputes Mr. Beninger, as he says Reese came up, and Beninger says the driver from Reese's barn; says that he did not know his name.)

States that all he knows about these cattle being the Staton cattle Jesse Miller told him so; it was raining and we didn't get out of the buggy. (V. 21, 8176.)

(NOTE.—Benninger swears that he made a minute examination of the Staton cattle, of the feed racks and mangers; the hay that was in the manger unquestionably. Mr. Benninger, when he testified, was testifying falsely. Here is a case of two other Company witnesses getting their wires crossed. It is unquestionably Mr. Benninger who is mistaken.

Again disputing Benninger, the Company's witness.)

W. W. HARPER, Deft.'s Wit.:

Defendants' quote W. W. Harper's ranch three miles west of Anaconda, on Warm Springs Creek. (V. 21, 8201.)

Is not a farmer, but a politician. (V. 21, 8201.)

Is in the ice business in the City of Anaconda *for eight years.* (V. 21, 8201.)

Only keeps stock horses to work in his ice business. (V. 21, 8211.)

Only 12 or 15 acres of tillable land on the *Senator's entire ranch*. (V. 21, 8211.)

Has never farmed his ranch; always rented it. Ranch used for dairy purposes. (V. 21, 8213.)

This tillable land only *raised oats that were cut for hay*. (V. 21, 8214.)

Has his ice ponds on *this ranch*. (V. 21, 8215.)

(NOTE.—The Court will here again see one of the defendants' *farmer* witnesses is not a farmer at all, but only has a small place of *twelve or fifteen acres* of tillable land, which he personally has never farmed, and the *Senator* who has been engaged in politics and the ice business for eight years shows he knows nothing about the stock and farm conditions of the Valley for the last eight years.

The Court will see by the testimony of all defendants' *farmer* witnesses that only *two* of the entire lot, Bowman and Parker, conduct their farms as a farming and stock raising proposition.

DuBey hauls wood; Peter Benninger hauls wood; Wm. Benninger, dairy man; Hengell runs a lodging house; Jorgenson sells cream in Anaconda.

Every one of defendants' *farmer* witnesses has to have some other business outside of their farming and stock raising to live, while on the other hand the complainants' *farmer* witnesses are *actual farmers and stock raisers*.

Harper's direct examination only shows he has bought some hay at intervals from the Valley east of Anaconda. It develops in cross-examination that the hay he bought of Vincent in the Valley *was the 1901 crop, or the year before the Washoe Smelter works began to operate*. (V. 21, 8221.)

Shows in connection with his feeding oats that he

always feeds five quarts to a feed, and sometimes heavier.

Or about 20 pounds of oats per day to the horse; practically sustains his horses on oats.)

Always stables his horses. (V. 21, 8222.)

Admits he quit feeding Valley hay from John Staffanson; *only fed two loads* from this ranch *after the smoke, while prior to the smoke period* (Vol. 21, 8202) *had bought his hay from this ranch exclusively since 1898.* (V. 21, 8225.)

(NOTE.—John Staffanson (Vol. 53, 21146) swears Harper only bought one load; refused to buy any more; *Harper said it was too smoky* (Vol. 53, 21147), and that he would not feed any more Valley hay, and on page 8203, Vol. 21, Harper states the hay he bought of Staffanson gave good satisfaction.

Can any one believe this last statement in the face of the preceding facts, that he had been buying hay from this Vincent ranch (purchased by John Staffanson from Vincent, and now known as the John Staffanson ranch) since 1898, over four years, and the first load he purchased and fed from this ranch, cut after the operation of the Washoe Smelter, he quit and refused any more of it.

Does the Court believe if this hay was, as stated by the Senator, "*all right,*" he would have not bought more of it, considering the fact *that for four years prior to that time he had been feeding hay exclusively from this ranch?*

The next load we hear of him buying from the Valley was in the fall of 1904 from Staton. He states the hay looked good, *but* the horses did not do as well on it as they did on the other hay. By the other hay here it must be outside hay, or hay cut in 1903, the year the smelter did not operate continuously. *One load* from Staton was enough. (V. 21, 8205.)

Harper shows, after feeding about 3,000 pounds of

the Staton his horses were failing, not doing well. Then we see he fed Bitter Root hay for a long time, and only in the late fall of 1905 did he again buy Valley hay, or bought of Benninger from the Staton ranch (V. 21, 8206), only took three loads of the four bought at \$10 a ton, and states he took hay all winter, or *three loads.*)

States he had no trouble with this hay, but on page 22729, Vol. 57, the Senator admits to one of his horses dying, and being hauled to the city dump. (V. 21, 8205.)

(NOTE.—Dr. Davidson, complainants' witness (Vol. 56, 22229), who was expressly sent to the Deer Lodge Valley by the Government of the United States, on page 22236, Vol. 56, the post-mortem lesions of this horse, and on page 22247, Vol. 56, states in his opinion the animals of the Valley are suffering from arsenical poisoning.

The Court will notice the significance of this death of Senator Harper's horses; no trouble up to 1906; had only fed two loads of hay cut under smoke conditions (excluding the 1903 crop) up to the winter and spring of 1905-1906; then he fed Valley hay for some months—result, lost one of his horses by arsenical poisoning, *and what speaks more plainly of the damage condition of the Valley hay bought by the Senator is the price, \$10 a ton delivered. Just \$8 a ton less than hay west of Anaconda sold for at this same time. See Parker's testimony.*)

Admits he refused to buy hay of Staton. (V. 21, 8225.)

(NOTE.—Mr. Harper's testimony fails to show he knows anything about the general farm and stock conditions of the Valley, and in no manner refutes the contentions of the complainants in this case, but confirms them on many points; shows the unsaleability of the Valley hay, and if sold at all at greatly reduced prices.

We wish to call the Court's attention to one of the specific statements of the Senator on page 8229, Vol.

21: "Well, I did; I didn't want to tangle up in any lawsuit, and never do like it."

The Senator in the above answer conveys to the Court that it is with great regret that he is compelled to appear in this case, as he did not want to become involved in the troubles of the farmers and the Company, but it only takes the testimony of W. J. Benninger, defendants' witness, to tear this *assumed* robe of reluctance aside.

Benninger, defendants' witness, admits on page 8127, Vol. 21, that the Senator, Mr. Harper, was in the Montana Hotel in the room with Mr. Benninger when he was being questioned, and an affidavit prepared in this case, to which affidavit Benninger afterwards subscribed and swore to. This, unquestionably, shows the *Senator was an active partisan* in favor of the defendants *long before* this suit came to trial, and was in the confidence of the defense to such an extent as to be admitted into the "Holy of Holies," the place where the affidavit mill was grinding out statements for the defendants which never saw the light of day in any court.

Does the Court believe, if the Senator was not *working directly* in the interest of the defendants and assisting them in every way possible, he would have been allowed to *hear sworn affidavits months* in advance of the trial of this case?

It was only necessary for Benninger, defendants' witness, to appear to completely denude the Senator of his robe of indifference and expose him as an active worker for defendants.)

A. M. DAY, Deft.'s Wit.:

Direct Examination.

Lives about three miles west of Anaconda, in Gray's gulch, on Warm Springs Creek. (V. 23, 8947.)

Has been farming there since 1894; owns 160 acres of

land. States it is hard to estimate about how much ground is tilled on his ranch. (V. 23, 8948.)

Thinks that he has about three-quarters of an acre of natural hay, rest timothy. Most hay ever cut on the ranch was last year, 73 tons, the last two years. (V. 23, 8849.)

Was hurt by the smoke in 1892.

The Company paid me \$364 damage on stock in 1902. No damage on the crop. Lost no calves in 1902. (V. 23, 8950.)

I do not raise a great deal of vegetables, outside of my greenhouse stuff. I make a specialty of lettuce grown under glass. (V. 23, 8965.)

Brought steers from Rock Creek on December 10th. Fed them until May 15th. Sold to Montgomery. (V. 23, 8969.)

(NOTE.—These steers were not pastured in the Valley, but fed Vallaye hay.

Another of defendants' witnesses tells of the good success he had feeding steers on Deer Lodge Valley hay, and this ranch of Mr. Day's is admitted by the farmers to be very slightly injured, and it lies west of Anaconda.

But what do we find that he sells these steers for? He sells eight of them on an average of \$36.30 per head, and one for \$31.90. These steers weighed only six hundred pounds dressed, not the size of an ordinary cow.

In fact, Mr. Day did no better with his steers than the Company experimental steers on Section Sixteen, and as Mr. Day never fed any steers in the Valley prior to this time, it looked very much as though he were trying to assist the defendants in manufacturing feeding evidence.

Outside steers, fed in the Big Hole, Nevada Valley and other points, fetched at this time on an average of \$54 per head.)

When the smoke comes up the canyon (Warm Springs) it comes up about 9 or 10 o'clock in the morning. At about 10 or 11 o'clock we nearly always have a west wind. It will go as far as Stuckey's place or just past Levensgood's, and then it will drift back, and in drifting back, if the wind is more to a northeasterly direction, which swings it out to my place coming back, but as a general thing the wind will nearly always raise there *between eleven and twelve o'clock*. Very seldom it ever fails unless it is an *extra big storm from the east*. (V. 23, 8976.)

The hay on the Levensgood place was cut early in 1905, earlier than it has been cut for years. (V. 23, 8978.)

(NOTE.—This does away with Freeman's criticisms of Levensgood's hay, on page 853, Vol. 22, that he bought for \$5 a ton and accounted for the burnt and bleached condition to being cut late.

Mr. Day describes the smoke condition the same as Parker, as hardly ever reaching Sturkey's place. Vol. 21, 8171-2, Parker's testimony.)

Levensgood's hay was cut before Stuckey's hay. (V. 23, 8979.)

(NOTE.—Still Stuckey's hay sold for almost three times as much as Levensgood's. Shows one man was damaged by smelter smoke; the other not so severely.)

We got more smoke from the old works and did my vegetables more harm than the new works has ever done. (V. 23, 8981.)

Q. Did the smoke from the old works go up Warm Springs a good deal?

A. I got it more there than I ever have had the smoke from the new works.

Cross-Examination.

Smoke from the old works done more damage on my place than from the new (Washoe Smelter). (V. 23, 8983.)

(NOTE.—By old works is meant the old works at the City of Anaconda, now torn down.)

The smoke from the old works, the prevailing direction was up Warm Springs Creek, almost west. (V. 23, 8989.)

(NOTE.—This confirms complainants' witness, who states the smoke from the old works seldom came down the Deer Lodge Valley.)

The smoke from the Washoe works generally drifts to the north and east. (V. 23, 8986.)

(NOTE.—Into the Deer Lodge Valley.)

I have not had as much smoke this spring as usual. The smoke that comes up Sheep Gulch is stronger than the smoke that comes the other way. I hardly notice it on the south side of the ranch (smoke on the south side same as Parker and Benninger testified to). (V. 23, 8986.)

(NOTE.—Here this witness, who only has a small place, tells of smoke being worse on some parts of his ranch than others.)

I have had less smoke on my place this year than I ever had. (V. 23, 8987.)

(NOTE.—This answer applies to both the old works smoke and the new works' smoke.)

The smoke frequently goes up as far as Levengood's, and the wind blows it back, and then it does not reach my place at all. (V. 23, 8988.)

(NOTE.—Again the same as Thomas Parker's testimony, page 8171, Vol. 21.)

Day on these two pages describes the effect of smoke on vegetation. *Most of my tender garden stuff I now grow under the glass.* (V. 23, 8994.)

(NOTE.—This statement shows he is compelled to change his methods of gardening since 1902.)

Keeps his stock cattle and horses on Rock Creek. (V. 23, 8999.)

(NOTE.—Rock Creek 20 miles west of his ranch.)

I only keep on my home place what stock I work or milk or have there for temporary purposes. (V. 23, 8999.)

(NOTE.—Still no damage to crops or stock on his ranch.)

Smoke does not affect ruttabugas and beets as much as it does lettuce, cabbage and stuff of that kind. (V. 23, 9002.)

Stuffs that grow under ground the top could be injured a little and still make a fair crop.

(NOTE.—Defendants' witness, in the above statement, show why the farmer's principal salable crop at the present time is potatoes. See McCallum & C. Mer-Co.'s purchase of potatoes.)

Lost no cattle in 1902. (V. 23, 9020.)

Lost two mares and one colt. (V. 23, 9026.)

The hay was no good I cut in 1902. (V. 23, 9024.)

(NOTE.—Since 1902 Day has kept his stock out of the Valley; also note he lost no cattle in 1902 and only two mares and one colt in July or June of 1903. While running on the pasture did not lose any stock, while it was the worst in the Valley in 1902.)

The horses that died in 1903 had sore noses. (V. 23, 9031.)

Had fits; was in good flesh when she died. (V. 23, 9035.)

Never saw the sore nose anywhere but in the Deer Lodge Valley. (V. 23, 9034.)

Fed about a ton of hay to the head of stock in 1901. (V. 23, 9070.)

Don't begin to feed cattle on Rock Creek until February or March, and feed to about the 15th of April. (See his testimony, page 8969, Vol. 23, feeds stock in Deer Lodge Valley to May 15th.) (V. 23, 9077.)

Winter stock cattle in Rock Creek on one-fourth of a ton to the head on an average. (V. 23, 9080.)

(NOTE.—Compare with Deer Lodge Valley.)

Day's claim for damages only shows that he had six head of cattle damaged, and that was all he put in a claim for, although the *Company took a release on all the cattle he had.* (V. 23, 9098.)

(NOTE.—Showing by taking release on undamaged stock the defendant, even in 1902 and 1903, was afraid of future damage to the stock of the Deer Lodge Valley.)

Re-Direct Examination.

Q. You spoke about having no sickness on your cattle prior to the smoke period, the short stacks. Prior to that time did you ever have an animal die there from any cause?

A. Yes, sir, I had some die of old age. (V. 23, 9110.)

No trouble with any insects on crops except cut worms. (V. 23, 9112.)

Re-Cross Examination.

I made A FAIR PROFIT ON MY STOCK PRIOR TO 1902. (V. 23, 9113.)

(NOTE.—And he kept them in the Deer Lodge Valley.)

ABSTRACT OF TESTIMONY OF CHAS. DUBEY.

(Defendants' Witness.)

Defendants quote Chas. DuBey, and state his ranch adjoins Staton's, Furst's and Bigrass', and has lived there a great number of years, and if DuBey is not damaged it is necessarily true that Staton, Furst and Bigrass are not damaged, and that DuBey states no damage has occurred to his place since the operation of the new stack.

The testimony of Mr. DuBey shows he has a small ranch; only cultivates about 15 acres, mostly potatoes; raises no hay. (V. 24, 9352.)

DuBey's land consists of a few acres of his 120, which he calls potato land. Has no natural hay land; raises potatoes, turnips and ruttabagas. (V. 24, 9314.)

(NOTE.—Mr. DuBey only produces *root* crops, and no claim is made to the injury of the quality or the poisoning of any *root* crops by the smelter, only that the *yield* is diminished, and by the stunting of the tops of this vegetation causes the roots or tubers to be smaller than under normal conditions.)

Raised about ten acres in 1903. (V. 24, 9314.)

DuBey states he fed hay from Staton's ranch of the 1902 crop (which crop was paid for as a total damage by the defendants); states this hay was baled in the winter of

1902-1903. Was rotten and mouldy, and still this witness swears his stock did well on it. (V. 24, 9317.)

(NOTE.—This testimony of Mr. DuBey's is surely the limit; stock fed on hay of this class, even if not poisoned, will not do well in any country.)

In 1904 had eight or nine acres of crop. Has raised no cabbage since 1903. (V. 24, 9318.)

(NOTE.—*Confined his crops since the new stack started strictly to root crops.*)

Claims to have got about 60 to 65 sacks of potatoes to the acre in 1904. (V. 24, 9314.)

(NOTE.—A crop at least one-third below normal, as shown by the testimony of all the farmers on the stand—Staton, Bohn and others.)

Bred one mare; got one colt in the spring of 1904. *But* the colt *died* in 1905. (V. 24, 9319.)

Colt got out of the corral and went up into Walter Staton's field. Neglected to go after it for a week or ten days; colt had left Staton's ranch and the next day heard it was dead on Willow Creek above Bigrass'. (V. 24, 9320.)

(NOTE.—This above statement shows Mr. DuBey kept his colt in *a corral*; did not pasture it, and it only took about ten days for it to die when *allowed to graze*.)

This statement of defendants' witness substantiates Staton's testimony in regard to conditions on Staton's ranch, as Staton states he cannot pasture stock; has to keep them in barns and corrals, as Mr. DuBey's testimony shows he was doing the same with his colt, *but* when the colt did get out and pasture it *died*.)

DuBey shows his horses pasture very little on his pasture, as it is small and is soon eaten off; feed hay and grain. (V. 24, 9322.)

DuBey claims he bought a stack of hay of a man named West in 1902-1903, mostly alfalfa, grown on Walter Staton's ranch; also from the Ford ranch or Section 16; also from the Lankin Ranch. (V. 24, 9323.)

(NOTE.—Still feeding hay of the 1902 crop and stock doing well, *according* to Mr. DuBey.)

Crop of 1905 was good; satisfied withit. (V. 24, 9327.)

(NOTE.—Let us see how easily Mr. DuBey is satisfied: First (page 8327, Vol. 24) sowed some grain and alfalfa. "*I let the stock eat the grain off, and I did not cut it*" (eight or nine acres).

I never raised alfalfa before (1905). (V. 24, 9327.)

(NOTE.—And he did not raise it this year, as he states (page 9327, Vol. 24) *he made a failure of it. Sowed it again in 1906. "I wanted to raise some oats, and started the alfalfa. But I did not do it. Made a failure."* Still Mr. DuBey was *satisfied with his crop.*)

Had nine and one-half acres of ruttabugas, potatoes and beets in 1905. *That is all.* (V. 24, 9328.)

(NOTE.—Did not raise a thing that grew above the ground that was for market.)

Shows that in the fall, in September, had to put up his stock and feed them hay. (V. 24, 9331.)

Claims he bought hay that had laid in the rain for three or four days, cut on the E. J. Evans Ranch in 1904; fed it to his stock; stock did well. (V. 24, 9332.)

(NOTE.—Mr. DuBey is the only man who makes a practice of buying damaged hay to feed to his stock,

and the strange thing about it is that his stock invariably does well on this *damaged hay*.)

DuBey states the range is better in 1906 than for seven or eight years. (V. 24, 9335.)

(NOTE.—All the testimony shows there is stock on this range, Willow & Mill Creek ranges, at this time (1906)—Mitchell, Allen, Staton, Evans and others; *nothing to eat the grass that does grow*.)

DuBey states his crop looks good in 1906 (note the time of his testifying, June 20th), but is backward on account of the cold season.

(NOTE.—Here we have decidedly contradictory statements. Range or grass better than in seven or eight years, still crops backward on account of the *cold*; still the grass best in years. We submit to the Court this is a very weak excuse, for if the grass grows good crops also must grow at the same ratio if undamaged.)

Alfalfa looks good this spring; sowed it again. (V. 24, 9336.)

(NOTE.—*But* here is the third year for Mr. DuBey's alfalfa and no crop yet, and on sur-rebuttal we hear nothing about the crops of Mr. DuBey in 1906.)

Admits Staton's stock running on range in summer and fall of 1905 looked very bad. Some of the Furst stock thin; some looked pretty fair. (V. 24, 9338.)

(NOTE.—The testimony shows Mr. Furst's stock mostly *dairy cows*.)

DuBey admits Staton and Furst (by their fencing) control the range. (V. 24, 9340.)

(NOTE.—The above statement of DuBey's shows that

Staton and Furst stock should do better since 1902 than formerly, as since 1902, by their purchase of land and fencing, they *control* this range.)

Mr. DuBey claims his cabbage in 1903 had holes eaten in the leaves by a fly. Here shows his entire ignorance of garden conditions by stating that he believes a *rain* would have destroyed the fly. Every one knows who has raised cabbage that this fly lives on the *under side of the leaf* of the cabbage, where it is impossible for the rain to reach them. (V. 24, 9342.)

Again shows his ignorance of farming conditions by stating "Dandelions" can not be destroyed. "*I have heard they can not be destroyed.*" (V. 24, 9343.)

(NOTE.—The testimony of this record shows by Bowman, defendants' witness, and others, that it is only necessary to plow the land to destroy the "dandelion.")

DuBey admits he knows nothing of conditions in the Valley outside of his own place. (V. 24, 9349.)

Only has a squatters' right to 120 acres of land. (V. 24, 9350.)

DuBey admits to living under a high hill, between him and the smelter, which raises abruptly, and although he lives within about three miles of the smelter he cannot see the big stack from his house, showing DuBey is sheltered from the smoke. (V. 24, 9351.)

Admits (page 9352, Vol. 24) that the hill between him and the smelter has something to do with the smoke not settling on his land, and (Vol. 24, page 9352) states he thinks the hill protects the lower 40 acres of his land.

Admits the draught down Willow Creek protects his land

a good deal. The wind generally blows down the creek. (V. 24, 9353.)

Never threshed any grain on his present place. (V. 24, 9353-54.)

Only thing I have done on my present place is raise *vegetables*. (V. 24, 9354.)

(NOTE.—*No other crop.*)

Admits a large portion of his income is procured by working for Pearson, hauling wood and stulls.

Has no family.

Just batched and lived there and done a little farming on this *truck patch*. (V. 24, 9355.)

Mr. Du Bey stated on direct that his crop has been satisfactory every year. Since the big stack he gives the quality of his potatoes for three years; in 1906, 1-6 small ones; in 1905, 1-4 small ones; in 1904, 1-2 small ones. (V. 24, 9356.)

(NOTE—Showing Mr. Du Bey is very easily satisfied, and also showing another thing—only one year's crop normal in three years, still Mr. Du Bey is satisfied.)

Admits that the returns from his potato crops is the only income he has from his farm. (V. 24, 9358.)

(NOTE—Du Bey, in this admission shows that if he depended on his *farm* for a living he could not exist.)

Admits for the last three or four years his principal business has been hauling stulls for Pearson. (V. 24, 9358.)

Admits he has made very little money on the ranch.

All the farming he has ever done has been done in Willow Creek in Deer Lodge Valley. (V. 24, 9358.)

Never did any extensive farming anywhere before. Never been engaged in the stock business to any extent anywhere.

The most stock he ever owned was in 1869 when he was freighting on the "Benton Road" (or Fr. Benton, Mont.), and only owned them one summer; sold them; had 39 horses and four or five cattle.

Du Bey was a freighter in 1869; went to Cedar Creek from there; mined there until 1871. From Cedar Creek went to Phillipsburg, a mining camp—mined there; went to Pioneer, another mining camp—mined there; prospected on Lost Creek; went to Rochester; to Trapper, prospecting. (V. 24, 9359-60.)

From Trapper to Bannack, a mining camp; left Bannock the fall of 1877; went from there to Poney; mined there; went to Silver Star; did nothing but mining; came to Butte. (V. 24, 9361.)

Hauled wood in Butte up to 1883. From Butte went to Anaconda—ran a saloon and hotel in Anaconda and in the wood business, and have been practically in the wood business ever since. (V. 24, 9361.)

(NOTE—Mr. Du Bey's history as a farmer and stock raiser is limited to about 10 or 12 acres of land, mostly spuds. His stock experience to a few work horses and a few milch cows. He is simply a man engaged in hauling wood, and does not pretend or attempt to live by farming, as he states on page 9365, V. 24, *that between farming times he hauled wood* which in the case of Mr. Du Bey would doubtless exceed eleven months of the year, and he admits this has been the

case ever since he has lived on Willow Creek, in Deer Lodge Valley.)

Du Bey admits he never did buy any first class hay since moving on to Willow Creek and before the smelter he paid \$5.00 and \$6.00 a ton in the stack for the poorest hay cut in that vicinity. (V. 24, 9366.)

Paid Pearson \$4.00 a ton for hay from the Evans' ranch in 1905; also bought the 1902 baled hay for \$1.00 a ton baled.

Admits that Pearson could not sell the 1902 hay on the market, which he bought for \$1.00 a ton, but Pearson threw it out and let it lay. (V. 24, 9367.)

(NOTE—Shows Pearson would not feed the hay to his stock at all.)

Admits outside of one mare he has not a horse on his place worth \$50. (V. 24, 9368.)

Admits telling Pearson that owing to the class of horses he had, he could afford to take chances in feeding this cheap hay. (V. 24, 9368.)

Admits he did not know what was the matter with his horses that died in 1903. (The ones the company paid for.) Appeared their feed was doing them no good; fell off so they could not work and they laid down and died. (V. 24, 9370.)

Can't tell if there is any difference in the feeding qualities of the hay now and prior to 1902. (V. 24, 9271.)

Admits he used to pasture and range his stock longer and make them depend more on the pasture and range than at the present time.

Feed more hay than formerly for the last three or four

years as the grass *burns up and plays out in September.*

Admits they did better in prior times than at present.
(V. 24, 9372.)

States it has been very dry years for the last four or five years.

(NOTE—Du Bey contradicts here almost every witness on the stand, as all who have testified to rainfall states that in 1905 and 1906 excessive rainfall in the Deer Lodge Valley, also stating the reason he has to feed so early, the grass plays out or burns up for the last three or four years.)

Mr. Du Bey has been in the vicinity of Anaconda since 1883. Du Bey is simply compelled to do what others have to do in the Deer Lodge Valley—pasture less and feed more in order to keep his stock alive. Mr. Du Bey states he can see nothing wrong *in the valley from smoke.* On page 9373-5, V. 24, states he used to pasture his horses in Missoula Gulch in grass knee deep in 1881-1882. These places are now included where the City of Butte now stands.)

Don't know whether the same cause that has destroyed the vegetation of Butte has also destroyed it in the vicinity of Anaconda.

Gives no cause for the destruction of the vegetation at Butte, but does attempt to claim the fir timber (V. 24, 9379-8) may probably be dying from a disease or smoke, and he don't know which, still defendants attempt to prove no smoke damage by this man, when by his testimony he shows he would not know smoke injury if he saw it.

(NOTE—Ralph E. Smith, defendants' witness, and M. E. Jones, complainants' witness, state this timber Du Bey *described was killed by the smoke.*)

Du Bey admits that since the erection and operation of the Washoe smelter the vegetation on the hills and ranges

is getting lighter, and that there is very few horses and cattle pastured there at this time, 1905-1906, while he admits on page 9381 there was many people who had stock on this range prior to the Washoe smelter. (V. 34, 9382.)

Admits hauling three or four horses from Pearson's, also three or four cows that were dead, to feed to his hogs. (V. 24, 9384.)

Du Bey admits Pearson had plenty of hay cut in the valley to feed his stock, but he would not feed it, and shipped hay from outside the Deer Lodge Valley and hauled it up to his camp to feed, and at the time he was shipping this hay in to feed he had plenty of hay on the *Staton place* or on the place where he was living. Du Bey further admits that Pearson while feeding the 1904 hay he baled and fed from Staton's place, at his camp, he lost horses. (V. 24, 9385.)

Du Bey, on direct, claims that his cows gave lots of milk; no kick, but it develops on cross that he milks six cows to enable him to have enough butter for his own use. (V. 24, 9394.)

Du Bey admits he knows nothing of the affects of "smoke." (V. 24, 9408.)

CHAS. BOWMAN, Deft.'s Wit. Direct.

Owns 360 acres of land in Deer Lodge Valley, about 14 miles north of the City of Anaconda, joins George Donisch's. (V. 24, 9411.)

Paid \$5500 for 200 acres of land, also paid \$3.50 an acre for 160 acres of railroad land that was fenced. (V. 24, 9413.)

Went to farming first on the Hensley's ranch in 1899. (V. 24, 9414.)

Moved on the ground he owns now in April, 1892. (V. 24, 9415.)

Seeded about 3 1-2 acres the first year to clover and timothy. (V. 24, 9416.)

Had between 250 and 300 tons of hay the first year. (V. 24, 9417.)

(NOTE—The Court will notice by his testimony that this is the only year that he could tell about how many tons of hay he raised.)

Gave the stock he had on hand in the winter of 1902 and 1903 about 200 head, and ten milk cows; thinks he had them when they came down to see him, that were alive; then he had some dead ones, the carcasses were there to see, and they could see them. (V. 24, 9417.)

(NOTE—Means by "they" the company's men, who were adjusting the claims for the farmers for sick and dead stock.)

In answer to the question, "What condition were they in?" stated, "Some of them were sick like, particularly some cows and some steers; they were sick looking. The cows fell off in milk to a certain extent." He went up to Mr. Dunlap, and he sent some fellows down to look after my damage. (V. 24, 9418.)

He went to see Mr. Dunlap and he said as soon as he could get around to it, he would send a man around to look after it and take care of it. (V. 24, 9419.)

The damage to his stock and oats were taken up and settled. This was in the summer of 1903. (V. 24, 9419.)

Let his stock run on *east side* range. Did the same when he was on the Hensley ranch. (V. 24, 9424.)

Took his cattle up about the last of September or the last of October, when on the Hensley ranch did the same thing; claims he had more feed there so he took them up earlier than generally. In the fall and winter of 1903 and 1904 he took good care of his stock, as he thought it would be necessary. (V. 24, 9425.)

In the winter of 1903-4 some of them looked a little rough and some of them were kind of sick. It was really in the winter of 1903 that he had his trouble. (V. 24, 9426.)

Horses that he worked or drove to town fed them in the stable most of the time; if they didn't work he turned them loose in the field. Did not feed his horses any bran. (V. 24, 9427.)

In the spring of 1904 turned his cattle out again; didn't notice whether any of his cows had slunk their calves. (V. 24, 9428.)

In the spring of 1904 turned his cattle on the *west range*, on Modesty Creek between race track and Modesty; claimed the range was not good, that his cattle always done better on the east side than they did on the west side; thinks there is better feed on the east side than on the west side; says there is a lot of sheep on the east side and not so many on the west side; that the east side is a bigger range; his cattle did not do so well that summer, or on the west side range. (V. 24, 9432.)

Had to take his cattle up *earlier that fall*; the cattle would not stay out in the hills; there was *nothing for them to eat*, they wouldn't stay. (V. 24, 9434.)

Fed his colts and mares that he was not working, oats;

I fed them oats when I was working them principally. In the spring of 1905 turned his horses over on the east side. One of his mares had a colt that was born and then died. (V. 24, 9437.)

Sold a car load of hay to Mr. Allen in Anaconda; it was alfalfa. He was to give \$10.00 a ton for it, but when it got to Anaconda he wouldn't take it; he said it was *bleached*. (V. 24, 9499.)

I went to Anaconda and tried to seel it to Montgomery. Montgomery said they had just shipped two car loads to Butte from close to Deer Lodge (meaning the hay came from some where close to Deer Lodge), and that he could not use it, but he said if he could use it he would take it. I went back and sold it to Mr. Allen; he gave me \$9.00 a ton for it. (V. 24, 9445.)

Lost three head of stock cattle and one milk cow, and one or two small calves just born; claims they got cold and they died. The three stock cattle that died were coming two years old heifers. (V. 24, 9447.)

He summer fallows some of his land; it keeps out the weeds, and dandelions. (V. 24, 9451.)

Thinks the dandelions are increasing, and thinks the only way to get rid of them is by plowing up the land and working it. (V. 24, 9452.)

(NOTE—The Court will readily see by the following questions and by the way they were put to the witness that his answers evidently did not please the counsel for the defendants—a method usually indulged in by them at any time the witness did not answer them satisfactorily, as the records will show during the trial of this suit):

Q. Have you had injury or damage at your place, Mr.

Bowman, since the new stack was built, that you have observed, or that you know of yourself, that was due to the smoke stack? (V. 24, 9452.)

A. *To that I cannot answer; I cannot answer that at all.*

Q. Well, do you know of any damage?

A. Well, I can't say; I could not say myself because it is something wrong that I don't understand.

Q. What I mean is, do you know of any damage or injury down there that you attribute to the smoke, that you think yourself on your place is due to the smoke?

“Question objected to by Mr. Clinton on the ground that it is asking him to think.”

Mr. Evans resisted the objection, claiming that a farmer knows whether he has had injury that is out of the ordinary, whether he has had anything that he attributes to any other than ordinary causes. (V. 24, 9453.)

The objection is overruled by the Master.

A. *Well, I couldn't answer that question at all.*

Q. Well, have you had any injury or loss or damage that you have observed there to your crops, or anything on your place that seems extraordinary to you in farming operations outside of the ordinary farming operations?

A. I don't know; I couldn't answer that at all; I couldn't say whether I was injured or whether I wasn't; I couldn't say anything about it.

Q. I don't want you to say absolutely, but anything that you observed yourself, that you know of.

A. Well, I would *like to see a cause* for everything; I

like to see the cause; if I see anything wrong, and I have not seen it much, as far as that goes.

Q. You have not seen anything wrong that you didn't know the cause of?

A. I didn't see anything wrong; but I knew that there was some cause for it; that was all. (V. 24, 9454.)

Q. Outside of the smoke?

A. Outside of the smoke.

(NOTE—Before Mr. Evans stops questioning him in regard to the wrong condition that he had seen, thinking, without a doubt, he had mixed him up some in his leading questions that would have helped the defendants out a little. Now, let us see how the position has changed by the defendants' counsel since the plaintiffs' witnesses were on the stand.

On page 913, V. 3, when Mr. Wolfe, complainants' witness, was testifying, in speaking of Kenneth Smith's horse, the following question was asked):

Q. What was his condition when you noticed it, Mr. Wolfe?

Mr. Wolfe answers as follows: "In my judgment he was there somewhere about a month and Mr. Smith told us we could take him up and drive him. Get the horse and drive him; that was the first I knew that it was his horse; we could catch him and use him on the wagon. We were short of a horse at the time, and I got the horse and brought him in *and he showed the usual effects of smoke; his nose was sore, and his hair standing up.*

Mr. Kelley objected to this answer and moved to strike it out. Conclusions: The Master sustains the objection to strike out "the usual effect of smoke."

On page 4069, V. 11, plaintiffs' witness, Jerry Ryan,

when asked to describe the condition of the timber, in the last three or four years, answered, "The timber has all died off. It is this red fir and white pine; they are killing the timber there all right."

After considerable argument between counsel (V. 11, 4070), Mr. Kelley moved to strike that from the record, the phrase, "they are killing the timber all right," and the Master sustained Mr. Kelley, and the same was stricken out.

When asked the question, if his clover leaves were not full of holes, stated he could not say that. "I did not go around and look for holes in the clover; there is some black in the clover, he noticed in the last few days there were black leaves; dead leaves. (V. 24, 9459.)

In answer to the question, "How do your horses stand work at the present time?" answered, "I have got one horse that is short winded. (V. 24, 9460.)

Q. Is it not a fact that all of them have kind of bad wind, and they don't stand the work as well as they have in past years; haven't you noticed something of the kind?

A. Well, I could not really answer that question. I think that the horses are not doing any better anyway; I will say that much; I think that horses can't stand any more work.

Q. If anything they are doing worse, is not that a fact?

A. I think so, yes; that has something to do with it.

States that when he was ranging his cattle on *the west side there were no sheep there.* (V. 24, 9464.)

Claims his cattle did not stay on the west range at all, but they would stay on the east ranges. (V. 24, 9465.)

(NOTE—Stay where there was sheep, but would not stay where there was smoke.)

Claims his cows have lost calves this year (meaning 1906.) (V. 24, 9474.)

States that he has never had a sore-nosed horse on his place. (V. 24, 9475.)

Claims that he feeds his horses and cattle all winter, and states that he saw lots of *sore-nosed horses on Donisch's place; that joins his place*; he saw them last winter; thinks that he had 15 or 16 head. (V. 24, 9475.)

Claims there is only a fence between George Donisch's place and his own. (V. 24, 9476.)

Claims that he lost two horses two years ago; one died in Anaconda; that it worked in hauling a load of hay to Anaconda, and the other died on his place; he had been plowing with it. (V. 24, 9477.)

Admits that he told Joseph Jacobson the first year he was on the place, he did not have to feed his horses any oats when he was hauling hay to Anaconda, but it seems now as if when I work them I have to feed them (meaning oats.) (V. 24, 9482.)

When asked the question, if he hadn't told Mr. Evans that he considered the ranges from the poor farm up to Anaconda *a total loss on account of smoke*, answered (V. 24, 9483), "I don't think I did. *I said probably that they possibly might be hurt at the poor farm a whole lot worse than we were.* I remember making thta remark, but as to *saying a "total loss," I don't think I did.*" (V. 24, 9482.)

When asked the question, "Was it not a fact that you do consider the farms from the poor house out there to Anaconda very badly damaged by smoke?" answered, "Well, if

the smoke—I could not say exactly what it is! it ain't worth much up in through there, whatever it is; they are not really flourishing, but I could not say.

States he has seen ranches closer by raising a little better crop and further down, probably the next ranch, not raising as much; did not consider the ranches raising what they should.

CHRIS JERGENSON, Deft.'s Wit.:

Came to the Deer Lodge Valley in 1872 and has been on his present farm since 1875. V. 24, 9483.)

Hay and grain were raised in early days in the Deer Lodge Valley and he raised quite a lot of oats on his farm at one time, but it ran out and he seeded it to tame hay. (V. 24, 9494.)

Is raising no grain at the present time. In 1902 his hay crop was not good. (V. 24, 9495.)

Had trouble with his stock in 1902 on account of the smoke; got damages from the company for stock and hay. (V. 24, 9496.)

Got \$8.00 per ton for wild hay at his ranch in 1903. (V. 24, 9497.)

(NOTE—Year smelter closed.)

Had 106 head of cattle in 1903 upon which the company paid damages, and in the fall and winter of 1903 had about 40 head of horses and cows; about 15 or 20 head were horses. (V. 24, 9498.)

Hay crop in 1904 was not as good as in 1903; got \$10.00 and \$12.00 a ton. (V. 24, 9499.)

(NOTE—Delivered in Anaconda. Record shows outside hay at this time, \$18.00 and \$20.00 a ton.)

Had about 15 or 20 head of cattle in the summer of 1904; horses had sore noses in 1904; he worked them, but the work was not hard work. (V. 24, 9500.)

States there was more hay in 1904 as compared with 1905; that he has some of it left; *sold a few loads in Anaconda at \$10.00 and has the balance on hand.* (V. 24, 9501.)

Always feeds the poorest hay to his stock; hay got damaged by rain and fox-tail. Has 60 tons of last year's hay crop on hand and is going to sell it *if he can.* (V. 24, 9502.)

In Anaconda at the present time they are out of hay and are unable to get hay. Could not say whether he could sell his hay in Anaconda or not; has sold but little of his hay. (V. 24, 9503.)

His pasture was worse in the fall of 1905 than in previous years.

Had about 20 head of horses and about 15 or 20 head of cattle in the summer of 1905; did notice anything wrong *until about October or November.*

(NOTE—The above answer of defendants' witness shows, as well as the testimony of K. D. Smith, Angus Smith, Byron Howells, Wolfe and others, that it is only in September, October and from that on until spring when the *bad effects* upon the *stock show* in the vicinity of the Bliss ranch.

Here we find Mr. Jergenson stating that during the summer of 1905 he noticed no ill effects and we will notice that the company's steers, according to the testimony of Mr. Jesse Miller, were removed from the Bliss ranch, and being fed on hay on Section Sixteen on October 16th.)

And then he noticed the horses with sore noses and they

had lost flesh; sold the sore-nosed horses about the 15th to the Anaconda company and got \$25.00 for four and \$35.00 per head for the balance; there were two mares that would weigh 1400 or 1500 and the rest were common horses. (V. 24, 9504.)

Hay looks pretty well considering the backward weather. States that he gave the Farmers' Association \$50.00 and that he *guessed* he had joined the Association, for the reason that he understood that the company would not settle with any outside of the association, and that a man would have to fight his own case, and then it would cost more than it was worth. I notified them in October, 1905, that I wanted to withdraw from the Farmers' Association. (V. 24, 9507.)

(NOTE—This man was looking for a settlement.)

Cross Examination.

Does not remember when he joined the association, might have been in the fall of 1904, and that he remained until the fall of 1905. (V. 24, 9508-09.)

Admits that he told Clinton in the fall of 1904 that the smoke conditions had again returned and that his horses showed it.

Admits he showed Clinton a horse with a sore nose, but does not recall whether his cattle were scouring or not, and would not say that they were not scouring, *but admits* that quite a percentage of his cattle were scouring, and it was very dark; also admits that his stock in the pasture were not in very good fix, and some of his milch cows looked badly and one had rheumatism. (V. 24, 9511.)

Admits Ben Crosswhite talked to him about withdrawing

from the Farmers' Association, and that Ben Crosswhite is his brother-in-law. (V. 24, 9513-9515.)

States that at the present time he has seven head of horses and seventeen cattle. Has no grain in cultivation on the farm this year or last, and has been about 14 years since he has had any grain in. (V. 24, 9515-16.)

(NOTE—Here is one of the defendants' witnesses whose testimony shows his stock has decreased from 106 head of cattle in 1902 (9498) to 17 in 1906. This is about the average decrease of the stock industry in the smoke zone, and these 17 head are *milch cows*.)

Does not know for what purpose the company bought his horses. Would not state that he had not told Byron Howell that it was no use to try to keep horses, and of his seven horses only one team is of much value and states the heaviest work he has for a team is hauling a light delivery rig. (V. 24, 9516-17.)

He sold hay in Anaconda since January, 1906 to June 18, 1906; one load to Frank Hoagland, one to Ben Crosswhite and one to P. Peterson. Sold two or three loads to other parties, but could not remember their names. *States he did not sell any in the winter of 1905 and very little at any time.* Admits hay is scarce in Anaconda and states he sold *three loads of hay in Anaconda last week*, which was more hay than he has sold in the past year, and he is getting \$12.00 for his hay.

Gets no orders from dealers like McCallum & Cloutier. (V. 24, 9520.)

In 1901 had over 100 head and the same number in 1902; this stock was both horses and cattle; states that the industry of raising stock has been more of an industry with

him than farming, and that raising stock and feeding his hay has been his custom. (V. 24, 9522.)

States he got damages in 1902 and he first noticed the smoke coming down on his farm in the fall of 1902, about September, and each year the smoke is *worse in the fall* or about *September* it begins to appear on his place. Got \$2000 damages from the company in 1902 and this was on live stock, milk and crops. (V. 24, 9523.)

(NOTE—Sweeney and other dairy men in this vicinity take their milch cows from the pasture prior to this date.)

States his crop of 1902 was practically harvested before the smoke came down on his farm. States there is over 150 acres on his farm he does not cut; that at the present time he has 14 cows and fed hay and bran to them during the winter; lets his horses run on the pasture until late and then he fed them hay. (V. 24, 9524.)

Takes his milch cows up in October to feed them and feeds them until about May 10th.

Says his crops look yellow in places, and he does not know how to account for it, nor does he know it occurred in former years. (V. 24, 9527.)

The first sore nose he observed on his horses was in the fall of 1902, and last winter was the first time his attention was called to the black scouring among the cattle. (V. 24, 9528.)

Wintered about 40 head of stock in 1905-6 and fed them about 80 tons of hay; started to feed his horses as soon as their noses got sore, which was about October or November, and he fed them until the company bought them. (V. 24, 9529.)

Did not feed so early in former years nor as much. Admits when he began feeding his horses there was plenty of feed in the pastures, *and he began feeding because his horses' noses got sore.* (V. 24, 9530.)

Admits he started a suit against the Anaconda company for smoke damages about February or March, 1905, and paid \$7.50 to cover the preliminary expense; that was for the purpose of trying to collect some of the money that was due from the company, and *admits he authorized the suit to be brought and gave in a list of damages and this damage was caused by the smoke from the Washoe smelter on his place, and that he sustained damage on crops as well as stock.* (V. 24 9532.)

States the sore nose of 1905 looked like the sore nose of 1902. (V. 24, 9533.)

In early days the Deer Lodge Valley was best adapted for stock raising and hay, and states that it is a well watered valley; that did well and there was quite a lot of stock; that *at the present time in his neighborhood there is scarcely any stock* and what there is is dairy stock; that in early days there was plenty of grass and wild hay and that the health of the stock, with the exception of one year, was good; that was the year the black leg got into the valley, 27 or 28 years ago. (V. 24, 9534-35-36.)

States his wife went up to see Mr. Dunlap about their horses getting sore noses some time about two years ago. (V. 24, 9536-37.)

States he had more hay in 1905 than in 1904, but he cut more land. (V. 24, 9540.)

Re-Direct Examination.

List of damages was on pasture and crops, but outside of the sore nose he knew of no damage to his place from smoke. (V. 24, 9546.)

Re-Cross Examination.

Left list of damages for pasture he wanted suit brought for, and damage to acreage of land. (V. 24, 9547.)

Admits the committee refused to O. K. his damage claim, as it was too high, and that the suit was brought for figures furnished by him. (V. 24, 9548.)

A. B. ENMINGER, Defendants' Witness:

Defendants' quote A. B. Ensminger as showing normal conditions (V. 26, 10144.)

Who is A. B. Ensminger. (V. 26, 10144.)

He lives one-quarter of a mile west of Anaconda and lived on his present place since April 15, 1906. Runs a small dairy—average about fifteen cows; has thirty-seven acres of ground. (V. 26, 10144.)

Pastures only from May to September. (V. 26, 10150-10152.)

Feed bran in the summer about one-half, as compared to winter. (V. 26, 10151.)

Pastures no horses. (V. 26, 10152.)

All the crop he raises is about seven tons of oat hay, and a potato patch, as he states, about the size of the Master in Chancery's court room. (V. 26, 10153.)

(NOTE—To what a slight straw the defense catches at; they ask this man how his *potatoes* came out, and he answers *fine*.)

And this man's farming operations is a sample of most of the witnesses for the defense.)

Ensminger shows by his testimony he fed 76 tons of alfalfa hay to 15 cows in the winter of 1905-1906—over five tons to the head. (V. 26, 10166.)

(NOTE—This shows this man's cows pastured little, if any; this hay cost him, on an average, of about \$11.00 a ton, delivered, or he paid \$55.00 a head per cow for hay alone.

Is this a fair sample of farm conditions? It shows simply, as all the farmers claim, that in order to protect their stock they have to feed hay and not pasture, and to feed hay in excess quantities.)

Buys outside hay from the Copper City for his horses, at \$16.00 a ton (V. 26, 10168.) States this is a mixed hay, not straight timothy. (V. 26, 10167.)

Admits he is no rancher. Only been in the dairy business about two years. Worked at the Washoe works prior to this time. (V. 26, 10168.)

The ranch I am on or, the Dayton place, is not a ranch at all, simply headquarters for my dairy, and a place for buildings. (V. 26, 10170.)

Admits he could buy valley hay from Staton, and did buy some timothy, clover and red top hay from Staton's ranch at \$6.00 a ton, and could have bought more of it but, notwithstanding the above fact, he now pays the Copper City at Anaconda \$16.00 a ton for hay; pays \$10.00 a ton more for outside hay than he could buy valley hay for, still defendants' counsel, in the face of the evidence of their own witness' testimony, argue to the Court no discrimination against valley hay.

Working for a contractor, putting up a pole line to

Anaconda for the company at the time he is testifying. Here is another man who, in order to live on his farming and dairy business, has to work for the company. (V. 26, 10171-2.)

Has no family and has principally worked for the defendants since coming to Anaconda; worked in the foundry for *seven years*. (V. 26, 10173.)

This shows this man is not competent to testify to ranch or stock conditions.

His brother also worked for the company prior to the dairy business. (V. 26, 10174.)

(NOTE—To show the bias of this witness we give the following questions and answers on page 10176, V. 26):

Q. Were you ever in the smoke steam?

A. Well, I have had whiffs of it once in a while.

Q. Could you taste or smell it?

A. I didn't eat any of it.

Q. Could you smell it?

A. Oh, the smoke, it didn't smother—it didn't *kill* me or anything like that.

Q. Well, you could tell you were in the smoke stream?

A. Well, I could smell it a little bit.

(NOTE—In order to show the frivolous manner in which this witness gave his testimony when on the stand we give a question and answer on direct):

Q. Where did you get water to irrigate your oats with? (V. 26, 10154.)

A. About all the water I got was when *old Billy* would pull the plug up above.

(NOTE—Compare this man's testimony and his experience in farming with the testimony of such men as the Honorable Conrad Kohrs, Morgan Evans and others. Who is the better able to tell conditions of stock and crops? This man who has worked for the defendants most of his life in their smelter and foundry or the men who came to Deer Lodge Valley and made their homes there before this man was born?)

FRED HENGELL, Defendants' Witness :

Defendants' quote Mr. Hengell as near the Bliss ranch and near the Warm Springs asylum. (V. 26, 10340.)

(NOTE—This is all they say about this witness. Hengell is another farmer witness for the defense, who has to be assisted in his farming and stock raising in the Deer Lodge Valley by keeping lodging houses in the City of Anaconda.)

Lived in *Anaconda* since 1889. Has only ranched in the Deer Lodge Valley for the last *two years*. (V. 26, 10340.)

His wife owns 240 acres on Warm Springs Creek; bought the ranch in 1904. (V. 26, 10341.)

Crop of oats for hay (10 acres); raised a garden for his own use (V. 26, 10345.) Here we have defendants' "*stock*" answer as to the quality of the vegetables. "*FINE*." Still he states the land was poor, run down; was not much account; lots of weeds. (V. 26, 10344.)

(NOTE—Still the quality—"FINE.")

On direct, Mr. Hengell states his stock did all right in the year of 1904-5, but it develops on cross examination he had the same trouble as the "smoke farmers." (V. 26, 10348.)

He states all the horses he had on the ranch to winter

in 1905-6 had the sore nose (V. 27, 10409-10.) He states he took these horses to the ranch in December of 1905, took them back to the owners in February, or about 60 days (V. 27, 10410-11), *and they had very sore noses.* (V. 27, 10405.)

Admits pointing out to Drs. Cheney and Faunt these horses and stating they were "*smoked.*")

Admits he immediately returned these horses to the owners (in Anaconda) on account of their condition. The owners of these horses instructed him if they got sore noses to bring them back. (V. 27, 10411.)

(NOTE—Showing the men who own horses in Anaconda recognize the smoke trouble in Deer Lodge valley.)

Admits he made the statement to C. M. Sawyer in Anaconda, which statement at that time was taken by a stenographer. (V. 27, 10428.)

Q. Has your stock been sick at different times in the years of 1904-1905?

A. Yes, sir. Sore noses, big lumps on the noses; choke and can't get their breath; *they eat all they can*, yet don't get fat."

Well, I said that, but not as to 1904. I don't think I said in 1904. In 1904 I did not have any sore noses. (V. 27, 10428.)

Q. Then if you made that answer it was to 1905.

A. Yes, sir.

Admits making the following statement to C. M. Sawyer, which was taken by a stenographer: "Some of my stock breeds and some does not." (V. 27, 10429.)

"You can feed the stock all the hay you want to and

they will not get fat. Something is killing the grass." (V. 27, 10431.)

Seven or eight chickens died the first day and twenty in a week. I had to haul hay and cover the grain up. (V. 27, 10432.)

The chickens stopped dying then, but the rabbits would dig holes under the stack and they kept on being killed. All of my turkeys died but one.

States that as soon as his grain was cut and stacked his ducks and geese also began to die. (V. 27, 10440.)

(NOTE—In order for the Court to understand the above—Mr. Hengell states he cut his grain and stacked, and in order to keep his chickens from eating the grain he covered the grain stack with hay, but the rabbits dug under the hay and got to the grain, and while the chickens ceased to die, after they could not get this grain on account of the hay covering, the hay covering was no bar for the rabbits, as they dug under the hay to the grain and still continued to die.)

Admits he covered his grain with hay, so his chickens, rabbits and stock would not eat it. (V. 27, 10440.)

Stated you can not find same conditions existing in any part of the State that exist in the Deer Lodge Valley. If horses and stock were fed the same amount they are here *any place else*, they would be *rolling fat*. (V. 27, 10432.)

Admits he had two horses and a calf die in the fall and winter of 1905. (V. 27, 10440.)

States one horse died a couple of weeks ago, about June 15, 1906. (V. 27, 10400.)

Hengell only had five horses; lost three by death. (V. 27, 10397.)

Only had four or five cows on the ranch in the winter of 1905-1906 and two or three yearlings. (V. 27, 10400.)

(NOTE.—Here on these pages this man who has a remarkable memory of the statement he made to C. M. Sawyer in the spring of 1905, cannot tell definitely whether he had four, five or six cows. Six is the greatest possible number he ever had. Has only two or three yearlings and don't know whether it is two or three, when he admits that these yearlings and a few milch cows is all the cattle he had.)

Lost about 600 rabbits out of 700. (V. 27, 10407.)

Q. How many chickens did you lose?

A. I don't know; *I have chickens dying all the time; they die whenever I commence getting out the oat hay; they commence dying.*

States outside hay in Anaconda in July, 1906, was worth \$20.00 a ton. (V. 27, 10407.)

(NOTE—Still the best price defendants' witness, C. Jorgenson, could get was \$12.00 a ton.)

Admits he signed and had presented to the defendants, through the Farmers' Association, the following claim for damages to his ranch. Stock and crops up to March 4th, 1905, for damage caused by the Washoe smelter. (V. 27, 10374-75.)

	Damage.
Damage to 2 work horses (value \$200).....	\$ 100.00
Damage to 1 mare (value \$75)	75.00
Damage to 1 saddle horse (value \$35)	15.00
Damage to 5 milch cows (value \$200).....	75.00
Damage to 90 tons hay (value \$2. a ton)	180.00
Damage to 50 tons of hay in the stack, total loss on account of poison in the same.....	300.00
Total damage to land	4800.00
	\$5545.00

Offers \$1000 for the land. (V. 27, 10375.)

(NOTE—Hengell's testimony shows the above claim was a claim presented to defendants for immediate cash settlement in 1905, for any and all damages to date, and this claim was "O. Kayed" by the Farmers' Association.

Hengell's claims as presented to the Farmers' Association in his own hand writing is as follows (V. 27, 10369-70) :

240 acres of land, at \$30 per acre	\$7200.00
1 cold died at Leavengood's in 1902.....	100.00
1 team damage	100.00
1 mare, full damage	75.00
1 saddle horse, damage	15.00
5 head of stock, damage	75.00
140 tons of hay, damage at \$3.00 a ton	420.00
	\$7985.00

(NOTE—The above statement is all in the hand writing of Hengell. He states every bit of it on page 10371, V. 27.)

This claim was cut by the Farmers' Association to \$5545.00 or a *reduction made by the Farmers' Association committee of \$2440.* (V. 27, 10471.)

Also his claim for stock in 102 *was totally disallowed.* (V. 27, 10371.)

(NOTE—Notwithstanding all the above acts and written demands of this man, he comes on on re-direct and makes the following statement in regard to his damages at that time) :

Colt died at Leavengood's in 1902-1903. *Dunlap* stated to me to go to Leavengood (when I asked him to pay for the colt) and that if Mr. Leavengood had such a farm he

had no business to take horses in there if he knew the ranch was *poisoned*, so I did not do anything more about it. (V. 27, 10445.)

(NOTE—Here at least is one claim Dr. Dunlap avoided paying in 1902.)

States the team he put in as being damaged to the extent of \$100 was not damaged at all. (V. 27, 10446.)

The mare he states he put in for \$75 total damage was not much account, and I thought I would put her in as damaged full value or \$75. Further states at the time he put in this mare he did not think she was damaged at all.

The saddle horse that he put in at \$15 damage there was no damage on it at all.

States his cows and yearlings he put in for \$75.00 damage were not damaged at all. (V. 27, 10446.)

States his hay he sold that he got the full market price for it, and consequently he was not damaged. (V. 27, 10447.)

But his statement that he sold his hay for \$10.50 to \$11.00 baled, and he shows this class of hay was selling for \$13.00 to \$14.00 if uninjured. (V. 27, 10386-7.)

Contradicts himself getting full price for his hay. (V. 27, 10447.)

The stock did not eat the hay very well. We fed it—fed it merely to stock and horses and they did not seem to eat it at all. (V. 27, 10406.)

(NOTE—This man's statement on re-direct is plainly false, as is shown by his prior acts and statements.)

States he left the Association before the suit was

started or (Bliss suit) before June of 1905. (V. 27, 10418.)

Admits he paid to the treasurer of the Farmers' Association \$50.00 *about six weeks ago, or after the time the complainant closed his case in chief, or in May, 1906. Over a year after he claims to have withdrawn from the Farmers' Association, he is still contributing to the expenses of the association. (V. 27, 10419.)*

Unquestionably this man is not telling the truth when he states he withdrew from the Association in 1905, or before the suits were started.

States he did not authorize the suit brought for damages in his name, and name of his wife in Deer Lodge County, but admits he gave in the statement on which the suit was brought to Mr. Sawyer and knew Mr. Sawyer was one of the attorneys for the association or farmers who were injured by the smoke. I gave in the claim in Mr. Sawyer's law office. (V. 27, 10364-10366.)

States he was not in Anaconda when the suit was brought. (V. 27, 10367.)

States on page 10364, V. 26, the reason he did not authorize the suit was they did not come after him for \$7.50, because I notified them not to sue and I never did pay it.

Admits on page 10379, V. 27, he notified none of the lawyers not to bring suit.

On this page he does not deny he did give in his claims for suit *two months after he filed his O. K. claim for damage. (V. 27, 10380.)*

(NOTE—The only notification is his unsupported statement that he mailed a letter to Walter Staton,

stating he did not want suit brought. Staton was in Court while this man was testifying and could have been called by the defense to support Hengell's statement as to his having received such a letter, but no proof is shown that this letter was ever received.)

States he still continued to pay his dues to the association after he knew suit had been brought. (V. 27, 10420-21.)

Admits paying \$50.00 to Beal, the treasurer of the Farmers' Association in about May of 1906. (V. 27, 10419.)

(NOTE—While the trial was going on.

The above facts show that Mr. Hengell was still considered a member of the Farmers' Association up to the time of going on the stand. No notification had ever been received of his withdrawal and his continuing to pay his dues up to within six weeks of the time he appeared on the stand shows he did authorize his suit to be brought and was helping pay the expense of the Association. His actions brand his testimony as false, as not authorizing any suit, and his excuse of not paying the \$7.50 is folly, as it is shown months after his suit was brought he paid to the Association \$50.00.

Does this look like he would not have paid \$7.50 (months before) if it had been necessary?)

He admits on page 10463, V. 27, that he subscribed money at the time he joined the Association, showing Hengell had contributed money to the association in advance to cover current expenses.

(NOTE—This man beyond a question of a doubt did authorize suit to be brought and all his actions show it, and he must have thought in some manner he would derive greater benefit by playing the "Benedict Arnold," and his statements show, no matter how he tries to twist, turn and deny *that damage*

does exist on his ranch, and the strongest proof of the damage on his ranch is his statement on Re-direct. My ranch would be worth at (this time) at least seven thousand dollars if the conditions were all right, nothing the matter with it.

Still he was willing to take one-third less than he considered his ranch worth in the spring of 1905. There could be only one possible cause of damage to this ranch and that was "smoke.")

Oat crop not very good in 1904. (V. 27, 10384.)

Did not thresh any oats at any time. Had only three or four tons of oat hay from about 10 acres of land in 1904. (V. 27, 10385.)

States he had in from 15 to 18 acres in oats in 1905. Cut it for hay; only got ten to twelve tons. (V. 27, 10406.)

Has over 100 tons of hay on hand at this time, July, 1906, almost twelve months after it was cut. Hay from outside points worth \$20.00 a ton. (V. 27, 10407.)

Has not sold over 15 tons of his 1905 crop. Admits he also has hay on hand from his 1904 hay crop. (V. 27, 10408.)

(NOTE—Here is a witness who can see nothing wrong when the defense is questioning him, and the above statements in regard to his hay *shows he cannot sell it at all.* Hay at \$20.00 a ton in Anaconda and this man has only been able to *sell twelve or fifteen tons in a period of almost one year.*)

Admits the hay in his barn was so dusty he turned the hose on it. Thinks the dust is *alkali dust.* (V. 27, 10413.)

(NOTE—Here is another new reason for dust on the hay of the Deer Lodge Valley. *Alkali dust.*)

States there certainly is something killing the grass.
(V. 27, 10431.)

(NOTE—Still on his direct nothing was said about the killing of the grass.)

Admits the tops and some of the leaves of his oats turned *white*, but gives a little green bug as the cause.
(V. 27, 10435.)

(NOTE—But we find that rabbits, chickens, ducks and geese died when they had access to this bug affected hay. Did the Court ever hear of bugs killing chickens, geese and ducks, *but* doubtless the Court has heard of arsenic killing fowls?)

Mr. Hengell, in his statement to Mr. Staton in 1905, told of the tops of his oats turning white, *but* no bugs mentioned. (V. 27, 10436.)

(NOTE—Mr. Hengell is the only man in the Court with the bug theory.)

Admits there is damage being done on his ranch, but states he does not know the cause of it. (V. 27 10439.)

(NOTE—*Still the fact remains that the damages are being done.*)

States the cause of his unthrifty cattle in 1904 was *rheumatism*. (V. 27, 10439.)

(NOTE—About as reasonable cause for his sick cattle as bugs turning he leaves and tops of his oats *white*.)

Mr. Hengell's testimony as a whole shows the statements as to conditions on his ranch made to the Farmers' Committee in 1905, also to his attorneys in 1905, was *true* and all his hedging does not destroy those statements.)

J. R. HEASLEY, Defendants' Witness:

Defendants' quote Heasley as a farmer and ranch owner. If Ryan, Bielenberg, Elliott, Martin and Bohn get the smoke he must surely get it too. (V. 29, 11200.)

(NOTE—Let us see who Heasley is and where he lives, the extent of his holdings, crops grown, stock owned, etc., and the Court will at once see the desperate effort made by the defendants to meet the complainants' case, and by the most flimsy and "grab at a straw" class of testimony.)

Heasley lives west of Ryan's, or up on the mountain side in a little canyon. (V. 29, 11200.)

Three years ago this month or (in July, 1903), took up this ranch. (V. 29, 11201.)

(NOTE—This clearly shows the class of this ranch when most of the land in this vicinity was taken up prior to 1883 and in the case of Bielenberg in 1864. States he only has *fifteen acres of land fit for cultivation.*

Compare his holdings and where situated to the thousands of acres of the five men mentioned by defendants, Bielenberg, Elliott and others, and see how fair the defendants' counsels are in their comparisons. Heasley's 15 acres in comparison with thousands of acres.)

Plowed none in 1903. Owned one horse. Raised potatoes for his own use only; *fine crop.* (V. 29, 11202.)

Worked at Anaconda the winter of 1904.

Put in some potatoes and a little garden in 1904; *had a fine crop.*

Had two horses in 1904. (V. 29, 11203.)

In 1905 had four horses.

Last year I did not have a big crop; probably one acre

of potatoes; some vegetables; some small garden truck; very little green stuff.

In 1906 had three acres of potatoes; one and a half acres of grain; half acre of garden. (V. 29, 11210.)

(NOTE—Five acres in all and the largest crops ever put in by Heasley, and a crop that one man would easily plow and plant in a week.)

This crop all looks *fine. July, 1906. (V. 29, 11210.)*

(NOTE—Here the defense attempts to claim that because this little isolated patch of Heasley's is not injured, none can occur on the thousands of acres of Bielenberg and others.

We again call the Court's attention to "Columbia Gardens" in Butte, the only spot within miles of Butte where a native tree is alive and a few acres of them only in the wide area of desolation surrounding Butte City.)

Mr. Evans, defendants' counsel, states on this page: "*Mr. Heasley is a farmer.*" (V. 29, 11214.)

(NOTE—Here is another of their *farmers* who can't make a living on his farm. *Work in the smelter.*)

States he could not buy a horse in the Valley for less than \$100. (V. 29, 11218.)

(NOTE—How false this is shown by the purchases of the defendants themselves from different men in the valley at about this time.

Heasley's farm, crops and stock business shows how the defense gleaned the country for a witness in their behalf, overlooking Scott Peck, Jno. Furst, Monte Strickland and fifty others who were farmers and *stock raisers* to light on this man Heasley who only came to his ranch in 1903 and whose total farming operations for all the years rolled into one would not be ten acres of land.)

Son works for the defendants. (V. 29, 11218.)

Heasley works for the company. Shows the only farming he ever done outside of the Deer Lodge Valley was on a *rented* place in Washington of 10 acres for two years, which was two or three acres of oats, the rest potatoes and garden. (V. 29, 11219.)

Heasley admits on cross that his horses did have sore noses in the winter of 1905 when on Jno. Perkin's ranch, but states after he took them home and put them in the barn and fed them they got well. (V. 29, 11220.)

(NOTE—Heasley had to do exactly as the so-called “smoke farmers”—take up his stock, the only *two* he had, on account of their getting the sore nose, and this occurred on *Jno. Perkin's* ranch, the man who testified he had no damage at all; the man whose ranch is entirely surrounded by Bielenberg, Elliott and others.)

Defendants' witness invariably dispute each other as to conditions on any given ranch, but it always takes the cross-examination to do it.

The witnesses for the defense almost invariably answer a question as to conditions of stock and crops in the valley as “*fine, good, excellent, etc.*,” almost always in the superlative degree—nothing poor, medium or average seen by the defendants' witnesses in the valley.)

Heasley lives on Section Six, west of Jerry Ryan's. (V. 29, 11222.)

(NOTE—We ask the Court to investigate where this man lives—the north string of 40, running east and west.)

Has no water for this ranch, simply a spring which he states he has *not got opened* up yet. (V. 29, 11223.)

These *fine* crops of Heasley's he states he raises without irrigation. (V. 29, 11223.)

(NOTE—The defendants, by this witness, have established the fact (if the Court believes him) that no irrigation is necessary in the Deer Lodge Valley, and which contradicts most of the *theories* of the attorneys for defense that to lack of water in the valley is due the shortage of crops; they can't consistently claim this after Heasley's testimony.)

It develops that Heasley's fine crop of potatoes was frozen in the ground and owing to the *extensive nature* of the crop and *the exceedingly large area* this is possible, *but not probable*. About one and half in 1905, also that of this crop half was on Perkin's ranch, only half an acre on his own, so his total crop raised on his place up to and including 1905 would not be *over an acre in all*. (V. 29, 11224.)

Contradicted himself here; states he did not try to buy a horse of a man in the valley; only tried in Anaconda. (V. 29, 11227.)

Heasley here values his ranch on which he has only 15 acres of arable land, no water, and only five acres in cultivation at *several thousand dollars*. (V. 29, 11228.)

Don't agree with Crosswhite, defendants' witness, who claims much of this class of land in the valley not worth fence. (V. 29, 11228.)

(NOTE—And by this class of testimony defendants attempt to meet the testimony of men who came to Deer Lodge Valley in the early days and have lived honorable and upright lives since boyhood.

About all this man's testimony shows is his absolute ignorance of all farm and stock conditions anywhere, and is worthless in this case.)

JNO. PERKINS, Defendants' Witness:

Defendants claim Perkins has had no trouble from the smoke, claims he has had cattle and horses.

(NOTE—This is not the Perkins ranch visited by Judge Hunt in 1905.

In order for the Court to clearly see the bias of this witness we will give a few of the statements made by this witness. It clearly appears from his testimony that here is a man who *thinks* every man's hand is against him, and his testimony, undoubtedly, shows his is against every neighbor he has.)

Perkins states (V. 31, 12068) that N. J. Bielenberg swore he had land that would have to go through a *quartz mill before he could make a ranch* of it, and would not feed a goose.

Perkins shows by his testimony he had been using water on his ranch that did not belong to him, and for the last five years he has been by a decree of court prohibited from using water from Dempsey Creek, as it belonged to Bielenberg, Elliott and others who owned the prior rights. (V. 31, 12071.

Perkins states to the Court on this page that if he let his cows run outside of his own enclosures they would not *be safe*. (V. 31, 12076.)

(NOTE—Doubtless trying to convey to the Court the idea that they would be stolen.)

States the only injury he has seen from the smoke, is *the Smoke Association*. (V. 31, 12107.)

States they have tormented him in every way. Was arrested three times in eight months without any cause.

(NOTE—It developed on cross that the Smoke Association had nothing to do with his arrests.)

States he helped expose fraud in connection with Elliott, Ryan contest; attributes some of his trouble to this fact. (V. 31, 12142.)

His son-in-law, *Jno. Martin*, had him arrested for shooting at him (Martin) through the door. Also admits Martin gave him a licking in Martin's yard. (V. 31, 12143.)

Also admits it was Martin, his son-in-law, who had him arrested for the murder of his wife.

Admits he went to Martin's house, one and one-half miles from his place with a gun there, but claims he shot at *Martin's dog*.

Claims Martin was spiriting his family away from him.

(NOTE—And he goes after his family with a gun.)

Had had trouble with his son-in-law before. Martin had choked him. (V. 31, 12144.)

Admits Judge Emerson put him under bonds to keep the peace. (V. 31, 12144.)

Admits his daughter had him arrested for going to her house and breaking her windows. (V. 31, 12145.)

Admits the trouble with his daughter was another trouble about his children.

Admits he was fined for contempt of Court in 1905; for taking water that did not belong to him.

Claims he was *innocent*.

Admits the water of the Creek is distributed by a water commissioner appointed by the Court. (V. 31, 12146.)

Admits he is the enemy of the water commissioner and the water commissioner is the *deadliest* enemy he has on the Creek. (V. 31, 12145.)

States W. T. Elliott drew a six shooter on him, and he could not get a warrant for his arrest. (V. 31, 12147.)

(NOTE—This simply shows Mr. Perkin's oats are taken very lightly in the community in which he is known.)

Perkins dodges the question as to the care of his children, and states his daughter could not know what care he gave them, *as she had not been in the house in four years.* (V. 31, 12171.)

Admits his son-in-law is the only man with whom he has had trouble, except with Elliott and Elliott's brother and this trouble occurred eighteen or twenty years ago. But admits he knocked Elliott's fence down, and doubtless gave Elliott proper cause for stopping Mr. Perkins. (V. 31, 12172.)

Accuses Elliott on this page of turning cattle into his grain crop. (V. 31, 12176.)

Believes that there was sulphur on Ryan's lake and states he believes Ryan put it there. (V. 31, 12177.)

Thinks the smoke Association as a body is persecuting him. (V. 31, 12178.)

Accuses his neighbors on this page of being handy with the branding iron. (V. 31, 12182.)

He don't like to have people arrested; he don't cause the arrest of many people.

Had no trouble at all with any member of the Farmers' Association except Elliott and Martin. (V. 31, 12188.)

(NOTE—The Court can doubtless see the bias and prejudice of this witness and can further see Mr. Perkins considers himself about the only honest man in his community, *but* as shown above he has been called into Court on various charges by his own daughter and son-in-law and punished for the same.)

Perkins on this page states his orchard has only been set out two years. (V. 31, 12074.)

(NOTE—Showing these trees have not been planted long enough to show what conditions are, and he only has about 100 trees. One peculiar thing the Court will notice and remember is his trip to the *James Perkins'* ranch, the only apple or fruit raiser of any note in the Valley, and although the Defendants on the Courts trip through the Valley were shown *Mr. James Perkins'* ranch, and crops, the defendants did not call *Mr. Jas. Perkins* to tell of conditions on his ranch.)

Dr. Cheney and Dr. Faunt testify to the smoke damage to the stock on this James Perkins' ranch—also Prof. Jones to the damage to the vegetables.

Why was not James Perkins on the stand? Doubtless because *he could not* testify in favor of the Defendants.

So they substitute *Juo. Perkins* and try to prove by this man no damage to his fruit trees, and defendants doubtless will argue that because there was no damage testified to by *Juo. Perkins*, that there could be none at James Perkins' place.

Admits his crop of hay has been getting less every year, *but his excuse* is lack of water. (V. 31, 12074.)

Sold his hay to Bielenberg for \$15.00 a ton in the stack in 1891. Before smelter sold it for \$5.00 a ton in the stack in 1904, after smelter. (V. 31, 12075.)

(NOTE—Here we see Mr. Bielenberg paying as high as \$15.00 a ton in the stack for hay to feed to stock before the smoke period, and as Bielenberg testifies to feeding and raising stock at a profit at all times prior to 1903.)

Shows the *market* for the bulk of the hay in the Deer

Lodge Valley is not Anaconda or Butte *but feeding to live-stock was the principal market.*

Now Perkins gets \$5.00 on the ranch, a decrease of \$10.00 a ton.

Sold some of this hay to his daughter for some glass he bought from her. (V. 31, 12075.)

(NOTE—It developed on Cross Examination *the way he bought this glass was he went up there and broke the window light out of her house.*)

States 1906 is the worst year he has had in the Valley; believes it is drying up for want of water. (V. 31, 12078.)

(NOTE—*The Record shows more rainfall in the Valley in 1906 than in years and as Mr. Perkins claims for five years he has had no water from the Creek to irrigate with he should, under these conditions have had a better crop than in former years.*)

Hay he sold to Doritz in 1904 he got only \$4.00 a ton for it. (V. 31, 12080.)

States he has only four horses on his ranch in 1906; all are over 21 years of age—while in 1905 he had six horses, 12081, V. 31, showing a loss of 33 1-3% horses in one year. Had, 12081, nine cattle in 1905. In 1906, has four cattle. (V. 31, 12082.)

Feeds his horses more oats and bran *lately* than he *formerly did.* (V. 31, 12084.)

States he never had any sick horses.

but on page 12151-2, V. 31, states two of his horses had sore noses out of six head. (in 1904 or 1905.)

Claims his horses trotted 36 miles with a load of hay in one day. (V. 31, 12124.)

(NOTE—*Over 21 year old horses, trotting this distance. Does this look reasonable? In this thirty-six mile statement doubtless the witness is trying to show too good a condition for the stock of the alley, as Defendants' Counsel have claimed by inference all through this record that a horse over 12 years old is not of much value for work, while here their own witness shows the most remarkable vitality of the horses of the Deer Lodge Valley, to-wit: Trotting thirty-six miles with a load of hay in oe day, but, doubtless this statement of Mr. Perkins is as true as most of his testimony.*)

All the cows he has on his ranch in 1906 is two *milch cows*, and one heifer and as before shown he has in 1906 only four horses. (V. 31, 12126.)

Still in Defendants Brief, they quote Perkins as having cattle and horses. His testimony shows his stock decreasing in numbers, and on 12127, V. 31, shows a loss of 25% in calves in 1905 or 12½% on the entire number he had.

Admits he had no damage in 1902 to crops or garden from smoke. Made no claim for vegetable or hay damage in 1902 or milk shortage. *But admits he did make claim for damages from the smoke to the Defendants in the fall of 1904 or 1905, and the claim was presented by J. W. James, a lawyer, attempting to sell his entire holding to the Defendants and states if they bought it I would not want any damages.* (V. 31, 12134.)

(NOTE—Shows this man was not damaged in 1902 to any extent if at all. *But after the erection of the big stack he was damaged, and so recognized, and went so far as to put his claim in the hands of an attorney to present to the Defendants. But through his bias at this time he comes into Court and states he never had any damage from the smelter fumes.*)

There are only two things that can be said in connection with this testimony—Perkins was either on the graft in 1904 and 1905 or is not telling the truth in 1906—either of which renders his testimony unworthy of belief.

Gives his excuse as wanting to sell—*his age, 52 years, five little motherless children.*

(NOTE—The Court will see by Perkins' examination that most of his troubles and arrests were caused by the alleged abuse of these same motherless children, *and by his own children at that.* (12142, V. 31.)

Claims in 1902 had no trouble to sell his hay; sold it to the neighbors right around him; sold to Elliott, Martin, Bohn, Ryan and others. "In one week I sold over \$800.00 worth. I had a corner on the hay in 1902." (V. 31, 12123-24.)

Q. Why didn't they use their own hay?

A. *They did not have any.*

(NOTE—This clearly shows that the above named people are much worse damaged by smoke than Mr. Perkins. In 1902 the names given, Elliott, Ryan, Bohn and Martin were paid by Defendants Company for damages that year, and Mr. Perkins' statement BY THE UNUSUAL DEMAND FOR HIS HAY BY HIS NEIGHBORS, THERE WAS SOMETHING WRONG WITH HIS NEIGHBORS CROPS IN 1902, as *he states they did not have any hay, while he states he had plenty.*)

Perkins swears he escaped all damage in 1902. If this is true, why not since 1902? *But* Perkins' testimony shows since 1902 or in 1905 he filed a bill for smoke damage against the Defendants, showing that he either did not know smoke damage in 1902 or is worse injured by the new stack than from the old ones.

He admits his crops are getting less; he has no stock to speak of; his place shows the same things are occurring on his ranch as other ranches in the Smoke Zone, but with him it is "poor season, lack of water, frost, bugs, etc."

Is it not strange these conditions did not appear prior to the smelter works?

Doritz cattle, some of them were beef. (V. 31, 12106.)

But when Wenger's beef buyer came there to look at them none were taken away, and his after testimony shows no beef sales from these cattle.

Admits some of the cattle when taken away, a month after the beef buyer was there were so weak they could scarcely get to Deer Lodge. (V. 31, 12138.)

Admits after one winters feeding in the Deer Lodge Valley, Doritz went out of the cattle business. (V. 31, 12139.)

States the smoke Association might have killed some of Doritz Cattle. (V. 31, 12150.)

(NOTE—Showing again the bias of this witness.)

Defendants speak of Mr. Perkins a diversified farmer, fruit raiser, etc.

Has threshed *only once* since he has been in the Valley. Been there about twenty-five years. (V. 31, 12170.)

His cattle business has run from eight to twenty head—now (1906) down to four head.

From five to six horses—now down to four head. Total stock on this 280 acres in 1906 eight head. (V. 31, 12169.)

Admits his hay is getting *thinner on his land*; not as good as it used to be. (V. 31, 12179.)

Hay his principal business. (V. 31, 12168.)

Perkins admits he has farmed this land for 20 years;

never hauled twenty loads of manure on it in the twenty years. Still he swears his neighbors lands in the Valley are run down for want of manure, while he claims on page 12167, V. 31, he gets *his manure from the Creek*, or from the muddy water, while his evidence shows he has no water right at all and has had no water from the Creek for five years, while his neighbors has. Still his neighbors land is exhausted while his is practically all right. If Mr. Perkins' theories were correct *his land should be getting poorer and his neighbors better, while he claims the reverse.* (V. 31, 12167.)

Extent of Perkins' meadow, 90 acres. (V. 31, 12166.)

Admits before Anaconda started the freighters used to take the grain raised in the Valley at 2½ cents a pound at the ranch, while now he claims if the Smelter at Anaconda ceased operation people would all be in the poor house. (V. 31, 12123.)

Mr. Perkins' testimony as a whole shows *first* he has an imaginary grievance against every man in his vicinity, and the character of his testimony shows that he attempts in this suit to injure them in every way he possibly can, and attributes the injury on his farm to every reason except smoke. His stock raising for years past has consisted of a calf occasionally from a milch cow. His stock losses have been much above the normal. The price of his hay has steadily decreased since 1901, and where he admits putting in a claim to Defendants for damages in 1905, shows he was injured, while at the present time through his vindictive nature he is doubtless willing to suffer to a certain extent, if he could cause his neighbors to suffer in a *greater* degree. The samples submitted by this man were, un-

doubtedly the best he could gather on his entire ranch and the character of his testimony absolutely disproves his statements that they are *average* samples; also when he swears the bundle of timothy cut and submitted was for horse feed in Anaconda and not cut to be produced in Court is also unquestionably untrue.

And Perkins' testimony shows there is the same trouble on his ranch as on his neighbors ranches and *not as* Defendants claim no injury at all.

Abstract of testimony of John W. Hamner, Deft. Wit.:

Have lived in the Valley since 1879. My experience in raising grain is that land *needs rest*, or fertilizing. (V. 19, 7343.)

(NOTE—This is exactly what the farmers of the Valley do,—summer fallow and fertilize. See the testimony of Elliott, Leffring, etc.)

Raised six or seven acres of potatoes and about the same of wheat and oats in 1903. (V. 19, 7343.)

(NOTE—Has the entire Fifer ranch under lease—four hundred and eighty acres; cut between fifty and sixty tons of wild hay.)

Oats a poor yield in 1905, in 1903, fair. (V. 19, 7347.)

Yield of hay not as good in 1904 as 1903.

Only sold one load of hay while on the ranch. (V. 19, 7349.)

(NOTE—There three or four years, and only sold one load of hay. (V. 19, 7351.)

Took this entire grain crop in 1905 to fatten ten pigs and feed a few chickens. (V. 19, 7357.)

Was out on July 28th. (V. 19, 7382.)

(NOTE—Beal crop of alfalfa not good; DeRosier crop not good; Dave Scott's grain looked short; potatoes looked good.)

States that DeRosiers potato vines were small, and gives as a reason,—bench land,—Bench land does not produce strong vines, and immediately after he states that Matt Smith's potatoes were good.

(NOTE—Matt Smith's ranch is west and north of DeRosier's Ranch AND ON A HIGHER BENCH.)

The wild hay at Elliott's did not look good as in the early days; not as tall. (V. 19, 7393.)

Elliott's hay looked as good *as to quality*, as any hay I ever saw.

NOTE—This is a peculiar statement; he says he saw dead leaves on the timothy and holes in the clover, and still says it looked as good as any hay he ever saw.)

This man cannot be much of a farmer or he never saw normal hay growing.

Elliott complained of the holes in his clover, and of the timothy leaves being dead. (V. 19, 7395.)

States Alfred Perkins grew a good crop of wheat on the new land, with but little water. (V. 19, 7397.)

(NOTE—Perkins testifies that this wheat took first prize at the County Fair, and *only went fifteen bushels to the acre—not one-half a crop; also, that the smoke hit it, and describes the condition of the same.*)

If this is a sample of Hamner's judgment as to crop, his views must be taken with a good deal of reservation.

States that this is the most wheat that he ever saw Alfred Perkins raise. (V. 19, 7397.)

(NOTE—See Alfred Perkins' testimony as to the yield of his ground at the present time and formerly.)

The hay crop on the Johnson place did not amount to anything, being too wet. (V. 19, 7397.)

(NOTE—This is all wild hay. In a former place in his testimony, Hamner states that farmers do not irrigate their wild hay as they formerly did, intimating in that answer that lack of irrigation is one of the causes of the decrease in crops, while in the Johnson case, too much water is the cause.)

These Company witnesses can find everything the matter except the SMOKE.

The Johnson Ranch is vacated; no one living there. (V. 19, 7399.)

(NOTE—*There is a fine frame house on this ranch, and a fine frame barn with stone basement; improvements are worth, at least \$4,000.00*)

On the Gerrard Ranch the hay was very poor. (V. 19, 7399.)

(NOTE—This ranch adjoins the Asylum Ranch on Warm Springs Creek.)

Elliott's cattle looked bad; the range was no good. I account for the poor range that sheep were on it; I saw no sick ones, but some dead ones. (V. 19, 7404.)

(NOTE—Wonder what he would call sick cattle, if they were poor in August, and seeing some dead? How would he account for the ones that are dying, taking into consideration the fact that the season was August 30th, when the cattle should be fat in any country.)

(NOTE—It is also a well known fact that cattle will not stay on a range where sheep run, so that well known fact does away with the theory of poor range on account of sheep.)

I have never been an extensive farmer at any time. My

principal business has been looking after stock. I would work for Mr. Johnson through the winter and summer, until horses would get fat, and I would ship in the Fall and stay East in the winter, generally. (V. 19, 7414.)

(NOTE—This statement of Mr. Hamner's clearly bears out the statements of the witnesses for Plaintiff, as to the condition of the stock in the Fall of the year, prior to the erection of the Washoe Smelter.)

Witnesses for the Complainant testified that their stock used to do well on the Fall pasturage, and this statement of Mr. Hamner's substantiates it, but at the present time, since the operation of the Washoe Smelter, stock has to be fed hay and kept in barns and corrals, where formerly they would fatten on the range and pastures.

(NOTE—In speaking of conversations with Brownell, as to removing stock from the Deer Lodge Valley, he following question was asked: "Q. During these conversations, did you consider that the stock had been, in any manner, affected by the smoke?" On page 7418, V. 19, he answers the question, as follows: A. Yes, sir, I considered that they had; he had lost some, five or six, within six months—within the last six months. I would not be positive as to the number, but something like that. He has been losing horses for the last three years.")

In the early days he used to ship hay to Butte; have not shipped any in the last three years. (V. 19, 7419.)

I know a man by the name of John Johns; he had some horses on the Brownell place last winter, and summer; I know he lost one; he lost more, but that is all I know he lost; he said he lost two, but I know he lost one last winter.

"Q. You have had a great deal of experience with

horses, haven't you, in buying and trading them and feeding and keeping them?" A. Yes, sir, I have had some." (V. 19, 7420-1.)

"Q. You have seen the ordinary diseases that affect horses? A. Yes, sir, some of them."

"Q. You saw these horses when they were sick? A. Some of them."

"Q. And at this time you are unable to tell the Court what was the trouble with them? A. I don't know."

(NOTE—Mr. Hamner seemed to be very well posted as to what caused the loss he suffered. First: The colt which he lost he accounts for that as a small mare to a large stallion. Dr. Gardiner held an autopsy on this mare; an abscess in the brain was discovered on autopsy. Mr. Hamner readily accounts for this abscess by the fact that he had a low stable door, on which the horses would probably hit their heads.)

The peculiar thing about this statement is that he has nine or ten head of horses, which doubtless use the same stable and show no ill effects.

One of these horses on the Brownell Ranch had fits; laid down and died in my field. (V. 19, 7421.)

When I worked for Spencer Johnson the health of the horses and cattle was good; had fine feed and looked good. Horses wintered on the range; in good health and good condition. Cattle were fed. We began feeding them in the Fall when the snow began and they could not rustle enough feed;—a nice winter, and we would probably not have to feed until January. (V. 19, 7421-2.)

(NOTE—There is no evidence in this case, introduced by the Defense, to show a decrease in the yields of the feed on farms of the Deer Lodge Valley in the

Fall of the year. Quite to the contrary, both the witnesses for the Defense and for the Complainant swear that there is plenty of feed in the field, and in a number of instances the fields were not cut at all, still at the present time, stock has to be taken from the field and put on feed in September and October, when no snow is on the ground.)

The earliest that I ever took any cattle on the range in the Spring was the 14th of February. These were dry cows and steers. They had been fed up to that time a little; wintered in the field. It would probably not take half as much to winter a cow then, as now. The early days, men wouldn't feed their cattle but three hundred pounds to a head, *if they had fine stubble for them to run on. If they had pasturage or forage for them to run on.* If they had pasturage or forage for them where they could rustle, they would probably not feed over a ton. (V. 19, 7422-3.)

(NOTE—The testimony of the Defense shows as follows: “Took the Staton cattle on the 19th day of October; fed them hay continuously from that date up to about June the first,—a total of eight and one-half months.

The testimony of the Defense will further show that the Staton herd and the Callen herd were all the cattle that the Defendant Companies had during the winter of 1905 and 1906.

Glancing at a map of the Deer Lodge Valley, you will see that the Defendant Companies had thousands of acres of land on which to pasture these cattle during the fall and spring,—all of Section Sixteen, three-quarters of Section Seventeen, and the entire swamp pasture, which the testimony shows, in this case, prior to the erection of the Washoe Smelter, and before the smelter operations were

commenced in the Deer Lodge Valley, *that cattle used to winter and do well, without any feed at all.*

Take thirty pounds of hay per day as a ration for a cow, and considering the length of time that these cattle were fed,—eight and one-half months,—we get about four tons to the cow, or the hay at \$5.00 per ton,—(about half of the value of the Deer Lodge Valley hay, if uninjured)—and it has still cost you \$20.00 to feed this cow, and saying that every cow in the herd produces a calf, which lives until weaning time, and taking the highest value for a calf that has been testified to in this case,—the calves sold by the A. C. M. Co., to Wm. Montgomery, which were fed for veal all winter and sold the following spring, at about \$15.00 per head,—you still HAVE LOST \$5.00 on every cow you have in your herd, on account of the excess feed required.

This is Defendants' own testimony as to the length of time these cattle were fed.

On the other hand, take about the largest amount of hay that Mr. Hamner gives as necessary to winter a cow, prior to 1902, which would be one ton, at a cost of \$5.00, and you have a profit of \$10.00 left, provided you receive the same price for the calves which we have taken.

It is clearly shown in this Valley, by numbers of witnesses, that with excess feeding, you may preserve the lives of your animals, but only at a cost greater than the animal itself. This is exactly what the Defendant Company has done.

Every head of cattle that they wintered in the Deer Lodge Valley, in the winters of 1905 and 1906, cost them

more to winter them than the said cattle would sell for the following Spring.

Between Lost Creek and Warm Springs Creek, there was as much as a thousand head of horses running there in early days. Very few there at the present time. (V. 19, 7431-2.)

“Q. Then, why, in your opinion, do the ranges not recuperate?” A. You tramp it out, and it is hard to start it again. Wont other grasses start.”

“Q. It don't seem to on this range?” “A. No, sir; well, there is more rainfall there than for several years previous.

“Q. Now, that being true, how do you account for the non-appearance of the grasses and things upon these ranges, where there is practically little or no pasturing? A. “I don't know why. *It don't grow there.* (V. 19, 7341.)

(NOTE—This last statement of Hamner's bears out the witnesses for the Complainants, as to the decrease in the growth of the vegetation on the ranges of the Deer Lodge Valley.)

Stock that ran out and got nothing but the Valley hay and grasses and pasture wintered well. They would fatten on this grass, *if they got enough of it.* (V. 19, 7434.)

(NOTE—All the testimony shows cattle can not be pastured in the Fall and Winter; no matter how much feed.)

Number of stock given by Hamner, as belonging to the following men in the Deer Lodge Valley in the early days: (V. 19, 7444-5-6-7.)

	Cattle.	Horses.
Gerrard	200	125
Ben Phillips	Several hundred head ...	
Botstein & arrott	30	100
W. Hensley	Some	100
Wm. Edwards	Some	100
W. Evans	60	20
Geo. Parrott	200	100
James Hardy	400	
Quinlans	Several hundred head ...	
Bielenbergs	Over one thousand head.	
Ishmael Gibbs	Several hundred head ...	
Johnson	200	250
Hugh Whitcraft		200
Eli Dezourdi	300 head cattle and horses	
Archie Smith	100 head cattle and horses	
Chas Andreoli	150	50
Staffanson Bros.	200 head of stock	
Jack Nelson	50	
John Fifer	60	100

Tom Ford and Dan Murphy, probably 100 head of horses and cattle each.

John Fifer, is the owner of the ranch on which I live at the present time; used to winter about 100 head of horses and cattle. (V. 19, 7447-8-9, 7450-1-2-3-4.)

William Hartley, 100 or 150 head of horses and cattle.

Tom Blakely, 160 head horses and cattle.

Frank Thraikseld, 40 head cattle and 30 head horses.

John L. Fifer, not one hundred, I don't think, all told.

Frank Goddard, 50 head horses and cattle.

Switland, 100 head of stock.

(NOTE—Or a total of thousands where there is now scarcely any.)

The Deer Lodge Valley was the headquarters for all the stock which I have mentioned. They were conducting this live stock, at that time, at a profit.

“Q. Could you conduct a live stock business there now at a profit, at the present time, under present conditions?

“A. I am sure, I don’t know.”

“Q. I will ask you whether it is your observation that the stock has done well on that stubble?” A. Some of them have, but not the length of time that they did in early days.” (V. 19, 7455.)

“Q. Did you feed the hay as early as you did last winter? A. No, I fed hay a little earlier this winter than I did last,—about a month.” (V. 19, 7456.)

“Q. *Is it not a fact, and don’t you know it to be a fact that if you let your cattle and horses run out in the fall on winter ranges, continuously, with no other feed, in the Smoke zone that they get sick generally?* A. I don’t know it, no, sir.

“Q. Well, is it a fact, or is not a fact, or what do you say about it? A. *I have had them to get sick; I have had them to die.* (V. 19, 7456.)

I have not let my horses or cattle run out all winter for four or five years. The reason that I feed my horses and cattle hay, when there is plenty of feed on the ground, is that if there was such a thing as poison in the grass they would not all get poisoned. I take that precaution. (V. 19, 7458-9.)

(NOTE—In addition to the horses that Fifer used to winter, on his ranch, had about forty head of cattle; same ranch that I live on at this time. I have, at the present time, eight or ten head of cattle and about the same number of horses.)

One hundred and twenty head of stock less upon this ranch at the present time, than there was in the '80's, notwithstanding the fact that the hay crop on this ranch has not decreased in yield over forty per cent, of the stock-keeping capacity of this ranch has not *decreased from 140 head to twenty head, or over eighty per cent.*

In the winter we fed thirty-three tons of hay. (V. 19, 7464.)

(NOTE—According to his testimony, he has twelve head of stock of his own this year, and two to pasture, or a total of fourteen head, to which he fed thirty-three tons of hay, or about two tons and three-quarters to the head of stock, besides having this entire four hundred and eighty-eight acres of land to use as pasture.)

In 1903 had about forty tons of hay, of which one-half was the rent hay, or about twenty-five tons; ten tons bought from Jacobson, five tons from Sweeney, or a total of about forty tons of hay fed; also bought one ton from Brownell; fed the following stock that winter; ten horses and six head of cattle, or sixteen head.

(NOTE—Shows that he fed three times as much hay per head as prior to 1902.)

I was road-supervisor in the year 1905. I worked out eight or ten hundred dollars. This is my fourth year on this ranch. I have farmed every year just about what I

am farming now. All this land has a value except about ten acres that we have farmed. (V. 19, 7466.)

“A. Yes, sir, I used it for pasture. This land has not been cultivated for ten or twelve years.”

“Q. Isn’t it a fact that land lying practically idle for ten years would not need summer-fallowing, as a rule? A. *It would in the Deer Lodge Valley, I think.*”

“Q. On what do you base your statements? A. On my experience; when land was new we could raise crops by spring planting. I never saw any spring plowing to amount to much for the last eight or ten years. I never tried summer plowing myself.

“Q. *The truth of it is, you worked considerable of your time on the road as road-supervisor?* A. *Yes, sir, that is the only way that I have made a living off of the ranch.*

(NOTE—This man’s last statement clearly shows that he did not rent his ranch, expecting to make a profit from the same, but more for the purpose of having a place to stop to keep his teams, while acting as road-supervisor.)

His statement that he has seen very little spring plowing for the last ten years goes to show that the farmers of the Deer Lodge Valley, who raise grain, plow heir lands as they have testified, and try to farm same to the best possible advantage, and do not farm them in a neglectful manner as the Defendants try to have the Court believe they do.

(NOTE—*The farmers all testify to summer fallowing.*)

I have worked for the Company. I have a team working for the Company now. I believe that I can summer plow

and raise a good crop of grain on the ranch, that I am now on. (V. 19, 7466.)

“Q. You just believe that.” A. I believe I can.

“Q. But you never believed it strong enough to try it? A. No, sir, *I have other work to do without running chances.* (V. 19, 7469.)

“I pay \$100.00 cash rent, and one-half of the hay for the whole four hundred and eighty acres of lan)d. (V. 19, 1470.)

“Q *Do you know of anybody in your neighborhood that have 100 head of cattle outside of the dairy farms?* A. *I can't think of anybody that I know of.*

“Q Do you know of anybody in that neighborhood that has one hundred head of horses? A. *No, sir.*

“Q. Do you know of any one that has fifty head of horses? A. *Perkins and Hoffman.*

(NOTE—The only two men that he can mention that has fifty head of horses are Hoffman and Perkins. These horses are on the east side of the Valley, and neither of these men are members of the “Smoke Association.”)

Mr. Perkins testified to this, and testifies that he could not keep his horses on his ranch, on pasture; that his horses ran on the east side on the range of the Deer Lodge Valley over the head of Boulder.

Mr. Jno. Hoffman never made any claim of being damaged by the smoke, nor has the “Farmers' Association” claimed he has been.

(NOTE—Mr. Henry Hoffman is a member but not Jno., the one quoted above.)

(NOTE—The Court will remember the testimony of

Mr. Perkins, that his horses run on the head of Boulder and Mr. Hoffman's run on the east side.)

Claims he rode on Modesty Range, and didn't see 150 head of cattle, all told, including the animals on the Antelope Range; only saw a dozen or two or horses high up on the Antelope Range; and claims on page 7475, V. 19, that he was working for the Defendant Companies at the time, examining the condition of range stock for them. (V. 19, 7474.)

(NOTE—Still JUDGE HUNT FINDS OVER NINE THOUSAND HEAD OF STOCK IN THE DEER LODGE VALLEY, BUT HE HAD TO COUNT THE STOCK OF THE ENTIRE DEER LODGE VALLEY AND SEVENTY PER CENT OF THEM WERE OUT OF THE "SMOKE ZONE.")

Swears he might have seen seventy-five head of horses on all these ranges, and he rode possibly forty miles; this was in July and August. (V. 19, 7475.)

Swears he did not see any dairy stock on the ranges; nothing except work stock. On Dempsey Creek Range he saw about one hundred and fifty head of cattle. (V. 19, 7476-7.)

Saw about sixty head of Elliott's cattle that there were only twenty-nine head of calves belonging to the sixty head; probably saw about seventy-five head of horses on the range. On page 7479, V. 19, "I did not ride on the North side." (V. 19, 7477.)

(NOTE—The Court will notice that the "North side" means north of Jim Perkins' and Elliott's, which was all fenced; also the Bielenberg pasture, all fenced. (V. 19, 7476.)

(NOTE—The Court will also notice that on the en-

tire range,—where Mr. Hamner rode,—of Dempsey Creek and Lost Creek, he did not see over three hundred head of cattle, and about one hundred and fifty head of horses, or a total of about four hundred and fifty head of stock; this absolutely DISPUTES the testimony of McCartney. He claims that he rode all day on the Dempsey Creek, as shown by his testimony on page 7482, V. 19.)

The Court will please take notice by the testimony of Mr. Hamner, that half of the hay he cut belonged to the Fifer's, whom he rented the ranch of; stock upon the ranch for sale, and he bought hay from outside ranches.

The Court will also notice on page 7500, V. 19, that Mr. Hamner claims the hay crop was BETTER THE FIRST YEAR THAT HE WENT ON THE RANCH THAN IT HAS BEEN SINCE, AND THAT HE WENT ON THERE THE YEAR OF 1903 WHEN THE SMELTER WAS CLOSED DOWN.

“Q. *Isn't it a fact that every crop is getting shorter every year down there?*” “A. Well, I think it is.” (V. 19, 7500.)

Q. Well, about the same the last two years?” “A. The hay crop was better the first year that I was there than it has been since.”

(NOTE—The Court will notice Mr. Hamner in answering the following question: “Q. Is it not a fact that you have seen a bog CHANGE IN THE VEGETATION OF THE VALLEY SINCE THE OPERATION OF THE WASHOE SMELTER, THE VEGETATION IS GETTING SHORTER ALL THE TIME, THE GRASS IS GETTING LIGHTER, THE OAT CROPS, THE STRAW AND EVERYTHING IS GETTING SHORTER

AND THINNER??" "A. *Yes, Sir, I think that it is.* (V. 19, 7500-1.)

"Q. Now, you stated in your direct or probably on cross-examination, that you never saw any sick cattle down in that country; is that a fact?" "A. I never have seen any that I knew was sick; I have seen poor cattle and bad looking cattle, but I didn't know they were sick." (V. 19, 7501.)

"Q. Well, describe these poor, bad looking cattle; what was the trouble with them?" "A. I don't know the trouble."

"Q. How did they look?" "A. Well, they were poor."

Q. Did they look tucked up and kind of humped, short-waisted or thin waisted? A. They looked thin and poor.

Q. What was the appearance of their eyes? A. I never examined a cow brute the whole time in the last two or three years that was poor or anything of the kind, only to see them at a distance.

Q. Did you notice them scouring? A. They all do that at this time of the year with the grass; they always do in the Spring of the year.

Q. Have you noticed them scouring in the fall of the year or winter when they were running out? A. Well, you bring them in off of the dry grass, and turn them into a meadow where it is green and they will always scour. (V. 19, 7502.)

Q. No, but have you noticed them scouring while running on the pasture; these poor cattle that you talk about? A. In the winter, I don't know that I noticed them scouring, but I have in the Fall. (V. 19, 7502.)

Q. This was in the Fall after the grass was cut? A. Yes, sir.

Q. I will ask you to state, in the fall, if you wouldn't notice that their tails and the rumps of them were covered with manure? A. Yes, sir.

Q. When did you first notice that conditions, in the Fall of the year? A. I don't remember.

Q. Well, three or four years ago? A. I have seen cattle driven off of the grass.

Q. *No, but I mean in the fall of the year, now after the grass is gone; when did you first notice this scouring, in the fall of the year?* A. *I never noticed it in particular until the last two or three years.*

Bred three mares; raised one colt. Bred two in 1904; one mare lost her colt. "I came near losing the mare." One mare saved her colt. In 1905 I didn't breed any. One got with foal. (V. 19, 7503.)

I fed bran all winter to my horses. The colt I raised. I commenced feeding bran last fall to my horses.

This is the first winter that I fed bran to my horses. (V. 19, 7506.)

Q. You fed it to all of your stock, both horses and—

A. No, sir, just my milch cows and the stock that I stabled.

ADMITS THAT HE TOLD MR. STAFFANSON THAT HE WAS FEEDING BRAN TO COUNTERACT THE SMOKE POISON; ALSO ADMITS THAT HIS OATS WERE SO SHORT THAT THE REAPER WOULD NOT SAVE THEM. (V. 19, 7506-7.)

Probably one-fifth of the oats that the reaper would not save. (V. 19, 7509.)

(NOTE—Here is a man who claims to be a practical farmer, and had no criticism whatever to offer on the direct examination about a crop of grain grown which was so short that a self-binder would not cut and bind more than four-fifths of the grain according to his own statement. In 1903 was the last year, and the only year that he threshed any grain on this ranch. Had two or three acres of wheat in 1905.)

Admits that *when he lived on this same place prior to the time that he rented it last, he threshed 6,000 bushels of oats from one-hundred and forty-five acres,—(over forty ore bushels to the acre)—* and admits that between the time that he raised the six thousand bushels of oats, until the year the oat crop was short and couldn't cut it with a reaper the LAND HAD RESTED TEN YEARS. (V. 19, 7511.)

(NOTE—Here is a piece of land along about '80 or '85 which produced about forty-five or fifty bushels of grain by the spring plowing; laid idle for ten years, prior to 1906; no crop of any kind whatever being put on it, and under smelter conditions, this land would not produce, after resting for ten years, oats which grew high enough that they could be cut and saved with a self-binder.)

STILL NO DAMAGE TO THE VALLEY BY
“SMOKE.”

Admits that HE USED TO FEED THE HAY RAISED ON THE RANCH, PRIOR TO THE WASHOE SMELTER, TO THE FIFER HORSES, AND IF THEY WERE IDLE THEY WOULD GET FAT ON NOTHING BUT HAY. (V. 19, 7513.)

Q. I will ask you to state whether or not during that early period if you fed your cattle anything as long as

they were pastured in the field? A. I don't know whether we did or not. I don't think we did. They all seemed to be healthy enough. (V. 19, 7514.)

Dunlap paid me \$4.00 per day while investigating the Valley. (V. 19, 7516.)

I don't know how much alfalfa Schwend had. I was not in it. I rode along the fence on two sides—one end and one side. I never went into this crop and examined it, just went along the side. (V. 19, 7518.)

Well, I was in the field later on and saw a little patch of alfalfa in the southeast corner; it was poor, very poor. It was scattering on the ground. They pointed the spots out to me, on the leaves, and the holes in them, but the crop was—it seemed to be developed, that is it had grown, that it had got its growth. I noticed spots on the leaves. (V. 19, 7518-19.)

This was the first cutting of alfalfa. (V. 19, 7519.)

I never noticed any garlic, onion smell on the hay. I have got the catarrh myself. I had heard people say, but that is not me. (V. 19, 7520.)

(NOTE—This is the other witness of the Defendants that lost his sense of smell.)

There has always been sufficient water to raise their crops, to irrigate their first crop of alfalfa, on their ranch, to my knowledge. (V. 19, 7522.)

Q. Did you notice any holes in the leaves or anything the matter with the alfalfa? A. I did not know that I did. (V. 19, 7524.)

The closest that I got to Nelson's ranch was probably

forty or fifty feet. The fence between me and the field. (V. 19, 7525-5.)

“Q. Did you make an examination as to the condition of the oats or anything of the kind? A. No, sir, I didn’t.

(NOTE—Leffring’s alfalfa was not a fair crop. Leffring swears that his crop for the same year was short, and in his testimony gives the amount of the shortage. The same is true of the grain.)

“Q. The only examination that you made at Nelson’s ranch was a little talk with Nelson, and went over the alfalfa field? A. Yes, sir at that time. (V. 13, 7526-7.)

Claims he saw holes in the clover leaves, alfalfa and weeds on Beal’s place. There were holes in the leaves of the grass. The lettuce had spots on it, and holes in the leaves. I don’t know but what the entire leaf was dead, where the spots were, they were dead. (V. 19, 7528.)

Q. Would you say that the stalk was fit to use as lettuce from what you saw? A. Well, it did not look so, no.

Also admits on page 7531, V. 19, that he had had a conversation with Mr. Beal, AND ADMITTED HE HAD NOT SEEN THESE CONDITIONS PRIOR TO THE WASHOE SMELTER BEING BUILT.

Admits that Beal’s alfalfa was not a good crop, and might have told Beal that he believed the Company would have to settle for damages. (V. 19, 7531.)

(NOTE—On page 7533, V. 19, he does not commit himself to an impeaching question, dodges; can’t remember; won’t say he saw a dead filly on the Beal Place in July.)

The samples that I gave him on the 27th day of July of the wild hay was partly dead on top; on the clover, there

were spots on the leaves. The size of the spots are about the size of the point of a pencil, sometimes larger; sometimes on the side of the leaf; sometimes on the middle of a leaf. There were dry blades on the timothy. (The samples were from Elliott's ranch.) (V. 19, 7535-6.)

(NOTE—Here, on the 25th day of July, this witness testifies as to the dead leaves on the timothy, which day in the Deer Lodge Valley, the timothy is only in the first bloom, and should be perfectly green under normal conditions.)

“Q. What about those samples of Elliott's that particularly attracted your attention, that made you take them and wan to carry them to town; was it because they were normal or in good shape, or was it because they were injured? A. No, I was taking the worst looking samples. (V. 19, 7537.)

“Q. I will ask you to state if you did not come to the Beal Ranch with some samples of clover and timothy, which you stated came from the Elliott place and discussed the samples with him (Beal)? A. Yes, sir, but I don't remember of telling him that ELLIOTT said he had had it up there (meaning the smoke) for two or three days or something to that effect.” (V. 19, 7538.)

“Q. Now, when you saw this timothy on the West end of Beal's garden on the irrigation ditch, I will ask you to state whether you did not say to Beal, in regard to the timothy, about the dead leaves on it, “This is not natural.”

“It should be green at this time of the year?” A. Might have said it. (V. 19, 7538.)

Breeding conditions were good; stock were healthy, (Prior to 1902.) *Saw sorc-nosed horses at Beal's last De-*

cember. Horses dying there within the last six months on Beal's place. (V. 19, 7539.)

ADMITS HE NEVER SAW SORE NOSED HORSES BEFORE THE OPERATION OF THE SMELTER. (V. 19, 7545.)

The range from the Powell County Line, south to the mouth of the Canyon is about eighteen miles. This range runs east from Gerrard's. (V. 19, 7546.)

(NOTE—(Gerrard's ranch is east of the Asylum Ranch.)

I have been back twenty-five miles and seen stock.

(NOTE—Here Hamner gives the east side range as being 18 to 25 miles, and only about two sections of land in this vicinity where the fence is up, and about only seven sections that has EVER BEEN FENCED. STILL DEFENDANTS ARGUE THAT THE RANGE IS ALL FENCED.)

Some of the timber is dead and some alive. (V. 19, 7547.)

Cut on Fifer Ranch first year, 69 tons. (V. 19, 7550.)

Cut on Fifer Ranch second year, 55 tons.

Cut on Fifer Ranch third year, 55 tons.

(NOTE—Here we see by Defendants' own witness the condition of farming in the Deer Lodge Valley. Cannot make a living on four hundred and eighty acres of land, for which he only pays \$100.00 a year, cash, and one-half of the hay cut, 7470, V. 19. One-half of the hay cut in (7549, V. 19), 1905 would be about twenty-seven and one-half tons, which cannot be sold (7550, V. 19,) for \$5.00 a ton, while in the 80's this man Hamner had this same ranch rented and states at that time it brought in a revenue from \$4,000.00 to 5,000.00 yearly, besides the keeping of one hundred head of live stock on this ranch, while after the operation of the Washoe Smelter this ranch for \$100.00 a year cash, and twenty-seven and one-half tons of hay,

which HAS NOT BEEN SOLD FOR TWO YEARS; IS THERE YET, OR TWO CROPS OF HAY. (V. 19, 7556.)

I don't think there was ever one hundred tons of hay cut on the Fifer Ranch; about seventy-five tons. (V. 16, 7556.)

(NOTE—This ranch as can be seen never produced over 100 tons and at the time it did produce the most. Mr. Fifer had over 100 head of stock.)

He can only keep about fifteen head of stock on this ranch. The testimony of this witness shows he never sold but one load of hay from this ranch while he has lived on it.

You will note that while the ranch produces within 25% as much hay as it did in the 80's, the ranch will not sustain one-sixth of the stock, and at this time he has for pasture, all the land on which 6,000 bushels of grain was produced.

(NOTE—It takes all the produce of the ranch to support a few cows and horses. The seven acres planted in potatoes is the only thing that was produced on this ranch and sold.)

This Fifer ranch in the '80's produced about \$4,000.00 or \$5,000.00 a year in grain values, besides the keeping of 100 head of stock. (V. 19, 7558.)

(NOTE—It now rents for \$100.00 a year and one-half of the hay, which this testimony shows, cannot or has not bene sold for two years.)

Where can you find a parallel case of a ranch in Montana which has depreciated as this, except in the Deer

Lodge Valley, taking Hamner's testimony as the absolute truth?

Does it not clearly show there is something wrong in the Valley?

There is no evidence of the ranch being injured in any way, except lack of use, and any one knows that land lying idle for ten or twelve years is practically virgin ground.

Does this Court believe that a ranch which produced 6,000 bushels of grain from 145 acres of spring plowing in the '80's and not farmed for the past ten years, would so deteriorate from natural causes as to only produce grain which did not grow high enough to cut and save with a binder? Can any one account for this decrease from natural causes? Is it not more reasonable to attribute it to the actual cause; the fumes from the Washoe Smelter?

Mr. Gillie, the superintendent of the Amalgamated mines, states in his testimony that vegetation was green in Butte, prior to the smelters there, where there is no vegetation at present. Every one knows the cause of the disappearance; "THE SMELTER FUMES."

(NOTE—Mr. Carson, Superintendent of the RED METAL Mines, states in his testimony, that he believes if the same amount of ore was smelted in Butte, as is now smelted in Anaconda, the PEOPLE could not live there, and STILL, the Defense would have you believe that what destroys vegetation, and probably kills the people, if these ores were smelted in Butte, would do no harm in the Deer Lodge Valley, but, as Prof. Traphagen states is a BENEFIT TO THE LANDS OF THE DEER LODGE VALLEY.)

Cummock crop was fine looking crop of alfalfa. (V. 19, 7559.)

(NOTE—Cummock gives the actual decrease of this hay for this year in this testimony as very large and abnormal decrease.

Hamner testified that he was only in this alfalfa about one hundred feet, and from this one hundred-foot examination, comes before the Court and testifies to the condition of a ninety-acre field.

Whose testimony must be believed; the man who cut the hay, stacked it, and measured it, and comes into this Court and tells the actual results, or a man's testimony who goes only one hundred feet into the field?

The Cummock ranch joins the Fifer ranch on the south; just a fence between this ranch and the ranch which Mr. Hamner lives on. (The Fifer Ranch.)

Liffring's stock did not look good. There was plenty of grass there. They had not shed good; looked like they had been poorly wintered. (V. 19, 7560.)

(NOTE—Here again we have a peculiar explanation of the failure of stock to shed. In July with plenty of green grass in the field, claims stock were poorly watered. Every one knows, no matter how poorly stock are wintered, in the spring, if grass is plentiful, they shed rapidly.)

Mr. Liffring testified that these cattle were kept up and fed all the hay that they could eat, so Mr. Hamner's theory as to the bad wintering of these cattle, falls to the ground.

These cattle did not look good. Cattle, at this season of the year usually looked good. (V. 19, 7561.)

On July 26th, I visited DeRosier's place. His crop

didn't look good. He lives between me and the smelter. I looked at his grain and alfalfa. His grain was short; it was oats. It seemed to be about right on the ground; not too thin, but it looked very short. His alfalfa did not look good either; it was thin on the ground, and short. (V. 19, 7562.)

I went out into the alfalfa. I might have seen some spots and holes in it, but I don't remember just at present. I probably did; I DID IN ALMOST ALL OF THE ALFALFA. (V. 19, 7563.)

DeRosier's land is bench land; I think his land was summer fallowed.

Matt Smith's crop looked good, that is, his oats. They were green. They were neither short nor long,—medium.

It was too early to make an estimate of what this crop would go to the acre. I examined Scott's oats. They were not so high. Scott's land was summer fallowed. Scott's crop did not look as good as compared to the previous. It was shorter. (V. 19, 7564.)

Q. Did you notice any spots or anything on the leaves or any bleaching of the oats in any of these examinations?

A. He told me where there was some that was white and looked bleached on the head, and I was close enough to see that they were, a spot of them. He told me what corner, and I never got a chance to go and examine them closely afterwards. (V. 19, 7564.)

(NOTE—Here is a man expressly employed by the Defendants to give to them the actual conditions as he found them in the Valley, who not only has reported to him, by the owner of the ranch, the damage to his crops, but, at the time he was there, he could see some-

thing wrong with some of the oats, and he comes into this Court, and tells this Court that he did not HAVE TIME to examine them closely afterwards.)

This man testified that he used his own judgment about what time to put in; set his own salary, and came and went at will, and still when he had damage reported to him, he could never find time to see it, but, he always found time to see anything which was favorable to the Defendant Companies.

I could not tell the cause of this bleaching; I know it was something that I did not understand. I never saw this condition when I was farming myself. I don't remember of ever seeing anything like it. (V. 19, 7565.)

Q. I will ask you to state, Mr. Hamner, if this oat crop did not bleach white in two or three days and not ripen at all? A. I HEARD IT DID, BUT I NEVER SEEN IT. Some of the leaves on the red top and timothy were dead. This timothy was not fully ripe on July 26th.

THE SMOKE IS THE WORST IN THE FALL OF THE YEAR IN OUR SECTION. THE SMOKE GETS HEAVIER IN OUR SECTION ABOUT THE TIME THE EARLY FROST COMES AND THE GRASS BEGINS TO DIE. (V. 20, 7569.)

I was on the Mrs. Spencer Johnson place on July 28th. This place is vacant. I have known this Johnson place ever since I came to the country; it was a good ranch in the early days. It was especially adapted to stock raising. It is not adapted to stock raising at the present time. They don't cut the same amount of hay that they did; they don't irrigate it. They had water, but they let the ditches fill up and let the dike in the river break away. V. 20, 7571.)

Q. I will ask you to state if you went back to any of these places like the Johnson place or the Hoffman place, or Alfred Perkins' place, and noticed the crop that was cut there or harvested; did you follow any of these conditions down to find out what happened finally to it?

A. I don't remember of going to any of the others (went to Bob Nelson's. (V. 20, 7573.)

I WAS ON THE GERRARD RANCH ON AUGUST 15TH, OR ABOUT THAT TIME. I WAS OVER HIS WILD HAY FIELD. THE HAY WAS VERY LIGHT. FIFTEEN OR TWENTY YEARS AGO I GOT PAID FOR CUTTING 400 TONS OF HAY ON THIS RANCH. (V. 20, 7576.)

Q. What would you say from what you saw last year, what would the hay crop cut; that is, say the better part of it?

A. It would not cut a half of a ton to the acre. I don't think it would; not all of it. (V. 20, 7577.)

Q. Do you know whether there was any hay cut on the Gerrard ranch last year?

A. I don't know.

(NOTE.—Here is another case of a poor crop, which this man who was paid to investigate conditions, did not take enough interest in to see whether it was cut at all or not.)

Gerrard bought hay. I saw him hauling it in the spring. I don't know what he did with it; he took it to his barn. (V. 20, 7578.)

Q. Do you know anything about the condition of that pasture, whether it is in good condition or not?

A. It looks good, yes, sir.

(NOTE.—This applies to the two sections of pasture land on the east side of the river.)

Q. What was the most horses that Mr. Gerrard had at one time?

A. I would be safe in saying he had one hundred head.

Q. How many cattle did he have at the same time on his place?

A. Probably that many cattle. On August 26th, when I was on his place, I don't remember seeing any stock. (V. 20, 7578.)

(NOTE.—Here is another instance of the total destruction, by some cause, of the stock industry on this ranch, and the destruction of the crop. The land is still there; no hays grow to speak of; pasture is there, which is good still on several sections of land, which are owned by Gerrard (see Map, Deft.'s Exhibit 1) on this tract of more than two thousand acres; Mr. Hamner does not see any stock. This man is not a member of the Farmers' Association either.)

HAMNER STATES THAT HE THINKS PRACTICALLY ALL OF THE BENCH LAND WAS TAKEN UP PRIOR TO THE BUILDING OF THE OLD SMELTER; COULD NOT TELL IF ANYBODY HAD TAKEN IT UP SINCE. (V. 20, 7581.)

Q. Can you tell us anybody who has taken up land there since the smelter has been started?

A. No, sir, I could not. I don't know of any one. (V. 20, 7582.)

Q. You don't know of anybody?

A. No.

(NOTE.—Here disputes Crosswhite, a commercial witness for the Company.

Here is a man who has been in the Deer Lodge Valley; worked there for years on the different ranges, and is thoroughly familiar with the conditions, and cannot name a single individual who has taken up lands since the erection of the first smelter, 1883.

This man's testimony must show to this Court, beyond the question of a doubt, that the lands of the Deer Lodge Valley were practically all settled up prior to the erection of any smelter, whatever, in the Deer Lodge Valley.

The testimony of W. R. Edwards, defendants' witness, on cross-examination, when asked to go through the map (Defendants' Exhibit 1) and point out any lands which were not settled upon prior to the construction of any smelters in the Deer Lodge Valley, but he could only point out one ranch that has been taken up on the bench between Anaconda and Deer Lodge since the erection of the smelter.)

Q. Did he seem to be pleased, Dr. Gardiner, with their presence there? V. 20, 7590.)

(NOTE.—By the word "THEIR" is meant, Drs. Cheney and Faunt. A. No, sir.

Q. Did not Dr. Gardiner try to get you to order Cheney and Faunt away from the place? A. No, he asked me what to do, as near as I recall to my mind, —I have tried lots of times to think of that, but I can't do it. He asked me if we would go ahead with the autopsy while those other veterinarians were there, and I said, "Certainly, go right ahead."

I do not remember of making any examinations on any other places except those that I have given you. (V. 20, 7592.)

Q. Are you acquainted with Will Staffanson?

A. Yes, sir. He is a brother-in-law of mine.

Q. Have you had any conversation with him concern-

ing the blowing up of the works—just before you went to work for the Company last year some time?

A. I might have said it is a wonder they don't try and blow it up or something like that.

“Q. I will ask you to state if you did not have a conversation with Will Staffanson, the gentleman here, in your own house about a year ago, in which you said that if you were damaged as bad as some of the farmers in the Valley, you would blow the thing to hell, meaning the smelter?

A. No, I don't remember of ever saying any such thing.

Q. Will you state that you did not say it?

A. Yes, sir, I will.

(NOTE.—In rebuttal, Mr. Will Staffanson takes the stand and positively swears that Mr. Hamner made this statement to him. (V. 20, 7598.)

Re-Direct Examination by Mr. Evans.

Q. Now, during that period, the early period, Mr. Hamner, do you recall whether or not there was any over-stocking of the Deer Lodge Valley; that is, whether they had accumulated more stock in the Valley than the ranges adjacent would take care of?

A. They all seemed to come in fat in the fall in the early days.

Q. Generally, what is the comparative care of stock, both horses and cattle, now and what it was in the early years?

A. *They take better care of their stock now than they did then; they look after them closer; winter them better.*
(V. 20, 7600.)

Q. Was there any noticeable percentage of loss in those early years of the cattle and horses that ran out worth mentioning?

A. There were losses in cattle; *I don't know that there were any losses in horses.* (V. 20, 7601.)

“Q. What natural causes are there that could be suggested that may account for the oat crop and the wild hay crop being lighter?

A. Well, they don't pay attention to irrigating their wild hay like they did. At the same time, on the other hand, they summer-plow their grain land, and they didn't do it years ago; I can't account for it. (V. 20, 7605-6.)

(NOTE.—The evidence of the witnesses in this case show that they do irrigate their wild hay meadow, wherever it is necessary to irrigate.

Roberts one; W. J. Evans another; Bliss ranch.

Mr. Hamner states that the potato crop is about the same now as in former years. (V. 20, 7606.)

(NOTE.—Mr. Hamner in different places in his re-direct testimony undertakes to account for the lessening of oat crops by the lands becoming exhausted through cultivation. On page 7604 he states that the potato crop is about the same, as in former years.

There is one peculiar thing about these two statements, and that is this, that stuff that grows above the ground, which can probably be injured by the smoke, is decreasing in yield, while stuff grown in the ground, on these EXHAUSTED lands of the Deer Lodge Valley, you have about the same crops as you did in former years, clearly showing that the lands of the Deer Lodge Valley are not exhausted, and this loss and shortage of crops is not caused by the soil becoming exhausted.)

On re-direct examination Mr. Hamner is asked the following question :

Q. What is your experience, from your observations in the Valley there, what do you think you could do with that farm if you owned it and had a lease on it longer?

A. I COULD MAKE A LIVING ON IT IF IT NEVER GOT ANY WORSE THAN IT IS NOW.

(NOTE.—This farm is four hundred and eighty acres of irrigated land.)

Re-Cross Examination.

Q. Would you say there was any more grass in the pastures and fields in 1880 than there is now, when you consider the enclosed pasture down there?

A. On the meadow land, do you mean? (V. 20, 7615.)

Q. Yes, sir.

A. You mean the stubble land?

Q. Yes, sir.

A. Stubble land, *I guess is about the same. After you cut the hay the grazing should be about the same on the stubble land now as it was in 1880. There is considerable more acreage of hay land in the Deer Lodge Valley at the present time than there was in 1880. (Gold Creek is below Garrison, towards Missoula.)*

Recalled on Sur-Rebuttal.

States that his crop of hay didn't do as well as the year before; it was cold the fore part of the season and wet. (V. 62, 24463.)

